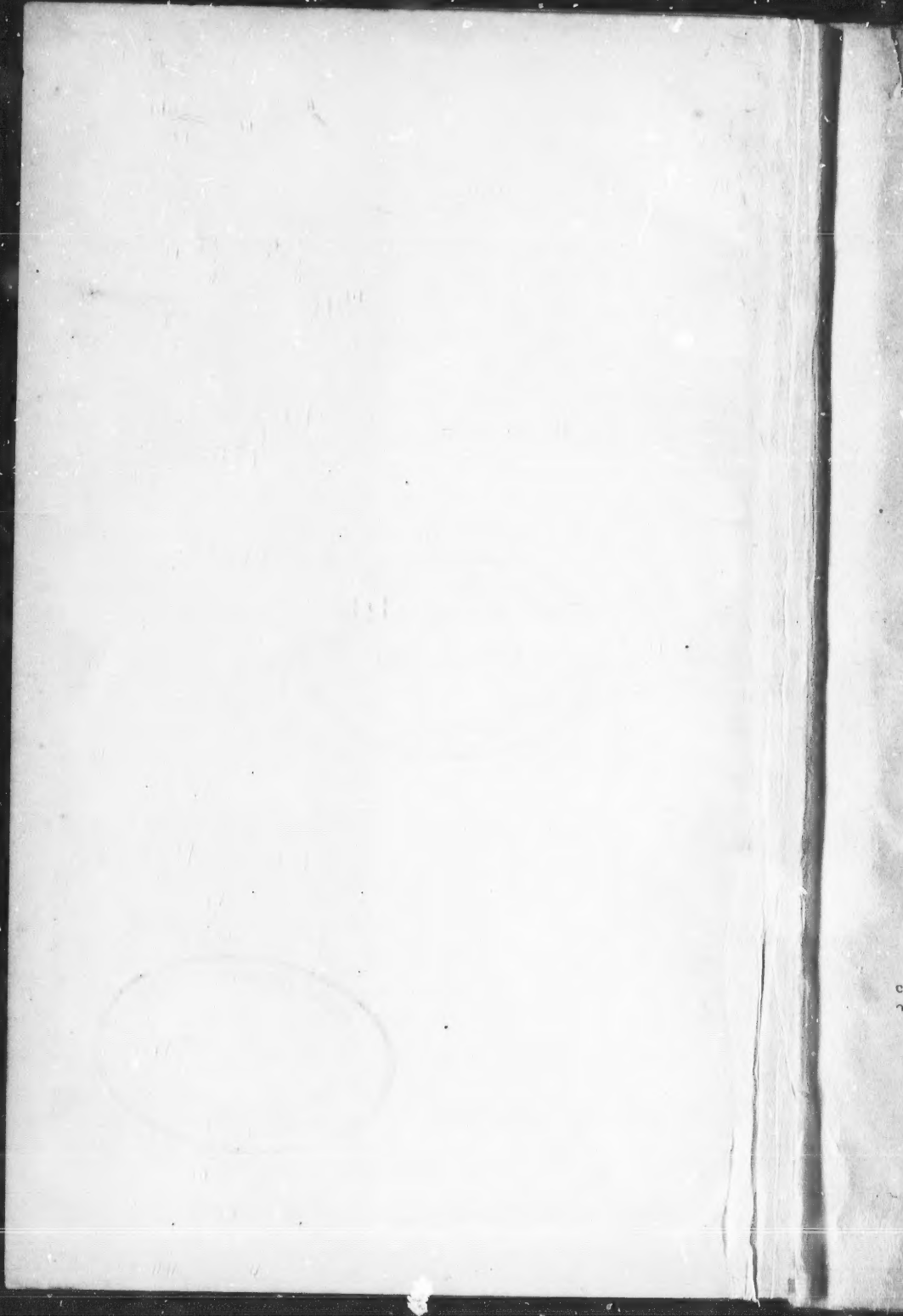




THE
Justices' Manual;
OR,
GUIDE TO THE ORDINARY DUTIES
OF A
JUSTICE OF THE PEACE IN NEWFOUNDLAND,
WITH
APPENDIX OF FORMS

SECOND EDITION REVISED.

ENLARGED AND ARRANGED
ALPHABETICALLY

BY

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RETIRED JUDGE CENTRAL
DISTRICT COURT.

"A vigilant magistracy, an accurate police, and an undeviating partiality in carrying the laws into execution, contribute more to the restraint and suppression of crime than any excessive severity of punishment."—*Paley*.

ST. JOHN'S, N.F.,
1898.

PREFACE

TO THE SECOND EDITION.

THE first edition of this work was published in 1877, under the sanction of Mr. Bennett's Government. Owing to the fire of 1892, and other causes, the original issue is not only now out of print, but material changes in the Law have rendered it also out of date. By arrangement with the Government, I have prepared a Second Edition. In compiling the new work, alterations and improvements have been made. The present book is arranged alphabetically. There is a full Table of Contents and a General Subject Index of a fairly exhaustive character.

The main object of this treatise is to provide Outharbor Magistrates with a Guide to assist them in the performance of their ordinary duties. For this purpose there are full directions for taking the preliminary enquiry in indictable offences.

Anyone who will carefully read the book and follow the instructions cannot go astray. The Magistrate will also find information about the most important business of his office, Summary Jurisdiction; especially about the new Law contained in the Summary Jurisdiction Act of 1897. This legislation should be carefully studied; it is a complete and sweeping change. The proceedings in License Cases, Bastardy, and the trial of fisherman cases and small civil actions, are also fully set out—as it is presumed that every Magistrate is provided with the Consolidated Statutes, the Acts of the Legislature and the Fishery Rules of 1898. I have only referred very briefly to the Law on such subjects as Masters and Servants in the Fishery, Wreck, &c.,

PREFACE.

all of which are fully set forth in the Consolidated Laws. The Magistrates' attention is also drawn to the Addenda.

This little work has been carried on under many Administrations; it has been in the hands of divers and different printers. The results are not favourable either to the beauty of its typography or its accuracy. I trust, however, that the worthy Magistrates throughout the colony may find it even more useful than its predecessor.

D. W. PROWSE.

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PREFACE

TO THE FIRST EDITION.

THIS little work was prepared by me under the sanction of the Government. It has been compiled principally from English Text Writers on Magisterial Law, which I have condensed and made applicable to local requirements. My object has been to give Outport Magistrates as clear and definite instructions and forms for all their ordinary duties as could be condensed within the small space at my disposal. I have endeavoured to be accurate, and in nearly every case I have given my authorities and quoted reported cases. I have to thank His Honor Sir HUGH W. HOYLES, the Chief Justice, for having kindly gone over the whole work, partly in manuscript, and partly in print, and I have his authority for stating that it meets with his entire approval. I also beg to thank Mr. BENNETT'S Government for having authorized me to prepare, and the present Attorney General for having allowed me to publish the work, at the expense of the Government. If the perusal of this Manual should tend to assist my brother Magistrates in the discharge of their onerous duties, and enable them to carry out the Law with more accuracy and efficiency, I shall feel amply repaid for all the labour and thought I have bestowed upon its preparation.

D. W. PROWSE.

St. John's, Newfoundland, }
January 10th, 1877.

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THE following pages contain the new District Court Act and the Rules approved of by the Judges of the Supreme Court. It marks a decided advance on the first legislation on the subject. Many persons, however, consider the jurisdiction of these Courts should have been further extended, the right to try small trespass cases should have been given, and there should have been no appeal in fisherman's causes. Under sections 142, 143 and 144, of the "Judicature Act, 1889," the Supreme Court is authorized to extend the provisions of this Act to District Courts. These Rules have not yet been published.

D. W. PROWSE.

St. John's, Nfld., Dec. 20th, 1892.

INFERIOR COURTS.

142. Where it is not otherwise provided (and subject to Rules of Court) on appeals from inferior jurisdictions to the Supreme Court or any Judge thereof, and upon removals of any matter in which evidence shall have been taken, it shall be competent for the Supreme Court and the Judges thereof to direct the re-hearing of witnesses, or the re-taking of evidence, or the taking of further and other evidence by the Court below and to require the report of all evidence taken and to require the production and examination of a witness already examined, or of any persons who may not have been already examined, and to refer back the case to the Court below for further consideration in whole or in part, and in giving judgment upon any appeal, either to dismiss the same or confirm or reverse the judgment, and to alter, amend or modify the same, and to make any order as to the execution of the judgment as may be deemed just, and to make in their discretion orders as to costs.

143. It shall be lawful for the Judges of the Supreme Court, from time to time, by orders to be approved of by the Governor in Council, to extend to the District Courts any of the provisions of this Act and Acts in amendment thereof, with such modifications as may be necessary or desirable.

144. Such orders may be published in the *Royal Gazette* for at least one month before coming into operation in the said District Courts.

THIS Act was put in force by the following Proclamation in the "Royal Gazette," July 14, 1890:

THE following chapter of the Consolidated Statutes of Newfoundland (Second Series), is published by order of HIS EXCELLENCY THE GOVERNOR in Council, to take effect from this date.

J. W. WITHERS,
pro Colonial Secretary.

CONSOLIDATED STATUTES OF NEWFOUNDLAND.

[SECOND SERIES.]

CHAPTER

"OF DISTRICT COURTS."

SECTION

1. Cent : District Court to be held in St. John's, etc.
2. District Court, Harbor Grace, to be held there, etc.
3. Jurisdiction of District Courts.
4. Courts may be held without Proclamation.
5. Constitution of the Court, two Judges in St. John's, one in Harbor Grace.
6. Judges may sit apart.
7. Judges to be *ex officio* Stipendiary Magistrates for the Colony, etc.
8. Plaintiff not to divide cause of action.
9. Power to compel attendance of witnesses.
10. *Fieri facias* and execution.

SECTION

11. Cause not to be removed unless over \$20.
12. Appeal to Supreme Court.
13. District Judges to make rules.
14. Salaries of Judges.
15. Judges not to practice, etc.
16. Clerks of the District Courts.
17. Jurisdiction for wrongful detention of goods; appeal; exception.
18. Defence by way of counterclaim; equitable defences.
19. Judges of District Courts to make rules subject to approval of Supreme Court.
20. Judge to take evidence in writing, etc.
21. Question of evidence; rulings thereon to be reduced to writing.

1. There shall be a Court of Record for the Central District, to be called the Central District Court, to be held in St. John's whenever business may require, and in such other places within the Central District at such times, and for such periods of time, in each place as may, from time to time, be prescribed by Proclamation of his Excel-

District Courts.

lency the Governor, which Proclamation shall, for the purposes aforesaid, have the force and effect of law, as if enacted in this Chapter.

2. There shall be a Court of Record held in Harbor Grace, to be styled the District Court of Harbor Grace, with jurisdiction over the following divisions of the Electoral Divisions of the Electoral District of Conception Bay, viz.:—Harbor Grace, Carbonear, Port-de-Grave and Bay-de-Verde, and also that part of the Electoral District of Trinity, lying on the South Side of Trinity Bay, between Scilly Cove and Bay Bull's Arm, inclusive. The said District Court of Harbor Grace shall be held at such places, within the limits above (other than Harbor Grace), at such times and for such periods of time at each place, as may, from time to time, be prescribed by Proclamation of His Excellency the Governor, which Proclamation shall, for the purposes of this Chapter, have the force and effect of law, as if enacted in this Chapter.

3. The said Court shall have power to hear and determine summarily all civil causes over which the Courts of Session now have jurisdiction, (1) together with all civil causes whatever to the amount of Fifty dollars, except where the title of lands may be involved, (2) and except actions for libel or slander, replevin, malicious prosecu-

(1) Courts of Quarter Sessions and stipendiary Magistrates may hear and determine all disputes to any amount concerning the wages or shares of servants in the seal and cod fishery, supply of bait and hiring of boats for the fishery—in actions for damages for wrongful dismissal of sealers; jurisdiction, \$40.

Stipendiary Magistrates have jurisdiction in Merchant Seamen wages under Imperial Acts up to £50 stg. No appeal in any of these cases except when sued for in the District Courts.

(2) Judges may try actions of trespass to lands provided the *bona fide* question of title does not arise. They can try the question of title to all other property except land up to \$50.

Administration of Justice,

tions, and actions against any Justice of the Peace, or other public officer, for acts done in the execution of his duty, if such Justice or officer object thereto: Provided that the jurisdiction of the Harbor Grace District Court, beyond the Harbor Grace Division of the Electoral District of Conception Bay, shall be exercised only in cases in which the Court of Sessions of the other Districts have not at present a jurisdiction.

4. In St. John's and Harbor Grace the said District Courts may respectively sit without Proclamation or formal adjournment, at the Court House in such places, or in such other buildings as may be used for that purpose.

5. There shall be two Judges of the Central District Court, who shall be Barristers of five years' standing, and there shall be one Judge of the Harbor Grace District Court.

6. The Judges of the Central District Court may sit together or apart, as business may require.

7. The Judges of the said District Courts shall be *ex officio*, Stipendiary Magistrates, Police Magistrates, and Justices of the Peace for the Island of Newfoundland and its Dependencies, and as such may have and exercise, outside the limits of the Central District and Harbor Grace District Courts, the same jurisdiction, powers and authority as are had and exercised by Stipendiary Magistrates within the Central District and the limits of the Harbor Grace District Court.

8. A plaintiff shall not divide any cause of action for the purpose of bringing two or more suits in the said Dis-

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District Courts.

trict Courts, respectively, but he may abandon the excess and recover to any amount not exceeding Fifty dollars.

9. If any person duly summoned (1) to appear in either of the said Courts, to give evidence in a cause pending therein, neglect or refuse to appear, and no just cause shall be shewn for such neglect or refusal, and proof be made of legal service of a summons, and that conduct money was tendered to him for his expenses, and also proof that such person is a material and necessary witness in the hearing of the cause, a Judge of the said Court may issue a warrant to bring such person before the said Court, at a time to be mentioned therein, to testify as aforesaid, and should such witness refuse to be sworn and give evidence, the said Judge may commit him for contempt to the common Jail or Penitentiary, within the said Judge's District, unless in the meantime the said witness shall consent to be examined and give evidence.

10. The said District Courts shall have power to order a *Fieri Facias*, or warrant of execution, to be issued after judgment given, and also to attach, under final process, moneys, goods, debts and effects in the hands of any third party, and to summon and compel, by warrant, the attendance of any party residing or being within the jurisdiction of the said Court for examination, and to make and enforce the observance of such order thereon as to the said Court shall appear just: Provided that no such attach-

(1) Rules 6, 7, and 8 prescribe the mode of serving a summons, but in cases under this section personal service should be proved, or proof should be given or personal receipt of the summons, and there must be a tender of conduct money to the witness personally. The Judge also must be satisfied that the witness is a material and necessary witness.

Administration of Justice,

nient shall affect executory contracts and debts not actually due.

11. No complaint lawfully entered in the said District Courts shall be removed or removable therefrom into the Supreme Court by any writ or process, unless the cause of action shall exceed Twenty Dollars, or such amount be involved therein, (1) and then only by leave of a Judge of the Supreme Court in St. John's or on Circuit, in cases which shall appear to him fit, and on such terms as to payment of costs or otherwise as such Judge shall order; and such removal shall be had upon rules or orders *nisi* and absolute in the first instance, without any writ of *certiorari*.

12. If any person shall feel aggrieved by any order or judgment of either of the said District Courts to any amount exceeding Twenty Dollars, (2) or involving such amounts, he shall have liberty to appeal from the Central District Court to the then next sitting of Her Majesty's Supreme Court in St. John's, and from the District Court of Harbor Grace to the then next sitting of the Supreme Court on Circuit at Harbor Grace or Brigus: Provided, the same be entered within two days after such order or judgment shall have been made or given, and, if required by the Judge of the District Court, recognizance or other

SEC. 11.—This section applies solely to cases removable from the District Courts before judgment. In practice no such removals have taken place.

(1) If the cause so removed is sent back to the District Court the party removing shall not be entitled to costs incident to removal notwithstanding he shall finally succeed in the suit. (Sec. 8, cap. 37, costs on the Common Law Side Supreme Court.)

(2) Where the actual question involved affects a large number of plaintiffs or defendants it is the practice to allow an appeal, although the amount sued for is less than \$20.

District Courts.

security, with or without surety, shall be entered into to pay the said claim and all costs.

13. The said District Judges, respectively, may make and issue general rules for regulating the sittings of and practice and proceedings and costs of their said District Courts respectively, under the provisions of this Chapter, and also frame all forms that may be necessary: Provided that the same shall first obtain the approval of the Judges of the Supreme Court or two of them.

14. The Judges of the Central District Court, appointed under this Chapter, shall receive annually, as salaries, Two Thousand Two Hundred Dollars each, and the Judge of the Harbor Grace District Court shall receive annually, as salary, the sum of Two Thousand and Fifty Dollars. (1)

15. The said District Judges shall not practice in any profession or business, or hold any other office of profit or emolument under the Crown, or take any fee or payment for any official act.

16. The Clerk of the Peace for the Central District shall be Clerk of the Central District Court, and the Clerk of the Peace at Harbor Grace shall be Clerk of the Harbor Grace District Court.

17. The said District Courts shall have power to entertain, hear and determine actions for the wrongful detention of goods and chattels, in which the specific return of the said chattels are sought, and where the value thereof does

(1) Reduced by 59 Vic., Chap. XXXIII., to \$1,834 for the Central District Judges, and to \$1,709 for Harbor Grace Judge, who has also \$240 travelling expenses, in all, \$1,949.

Administration of Justice,

not exceed Two Hundred Dollars; and, in the event of a judgment for the plaintiff, and in case the defendant shall appeal against the said judgment, the said District Courts may order the defendant to deliver the said goods and chattels to the plaintiff upon such terms and conditions as to security or otherwise as the said Courts shall consider just and reasonable. Provided, that in case of appeal by the defendant, he shall be entitled, if the Supreme Court shall so order, to have the question of his right to the said goods and chattels tried by jury as if the action had originally commenced in the Supreme Court. This section shall not apply to actions for the recovery of goods and chattels taken under a dstraint for rent. (1)

18. The District Courts may entertain defences by way of counterclaim (2) or of equitable defence; (3) but

(1) This would be an action of replevin, and under Sec. III. the District Court has no jurisdiction in actions for libel, slander, *replevin*, malicious prosecution, etc.

(2) *Counterclaim*.—This provision extends the jurisdiction of the Court very materially. The difference between set-off and counterclaim is this, a set-off must be between the same parties to the action and must "allege a liquidated demand due from the plaintiff to defendant, and shew that on the whole account between plaintiff and defendant, nothing is due to defendant."—(Roscoe 671).

Set off formerly could not be pleaded where the damages were unliquidated, for instance a tenant's claim for non repair by landlord could not be set off against rent. Now under *Counterclaim* which is in the nature of cross action by the defendant which may be made, altho' in respect of or against a claim for liquidated or unliquidated damages.*

Counterclaim must contain in itself a specific statement of the defendant's claim stated shortly and concisely. Judgment can be given for the defendant in counterclaim up to \$50, with costs.

(3) *Equitable defence*.—The power to entertain equitable defences largely extends the jurisdiction of the Court. The District Court under this provision must give to every such equitable defence raised before them in a cause such and the same effect by way of defence as the Supreme Court would give him. The District Court would therefore under this provision take notice of errors and mistakes in contracts, trusts, frauds and all the large and varied circumstances under which equity will interfere on behalf of a defendant. The District Court can give effect to every point that can be raised in equity on behalf of defendant as an answer to the plaintiff's claim, it cannot however give further relief by way of injunction or decree for specific performance.

District Courts.

where any such defence or counterclaim of the defendant involves matter or amount beyond the jurisdiction of the Court, such defence or counterclaim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counterclaim: Provided always, that in such case it shall be lawful for the Supreme Court, or any Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such District Court to the Supreme Court, or Judge thereof; and in such case the record in such proceeding shall be transmitted by the District Court to the said Supreme Court; and the same shall thenceforth be continued and prosecuted in the Supreme Court as if it had been originally commenced therein.

19. The said Judges of the District Courts shall make rules for

- (1) Regulating the sittings of the said District Courts;
- (2) Regulating the pleading, practice and procedure in the said District Courts;
- (3) Regulating the granting of appeals in all matters over which the Supreme Court has appellate jurisdiction;
- (4) And generally for regulating any matter relating to practice and procedure of the said District Courts, or to the duties of the officers thereof, or to the costs of proceedings therein, and every

Administration of Justice,

other matter deemed expedient for the better attaining the ends of justice, advancing the remedies of suitors, and carrying into effect this Act.

Such rules, before they shall come into operation, shall first obtain the sanction and approval of the Judges, or a majority of the Judges, of the Supreme Court, and shall be published in the *Royal Gazette* for at least one month.

20. Upon the trial of any cause, it shall be the duty of the Judge to take the evidence of the witnesses, fully in writing, together with his rulings on the admission or rejection of evidence.

21. The Solicitor, on either side, upon the said Judge ruling against him, on a question of evidence, may reduce the said question to writing, and hand the same to the Judge, who shall transcribe the same on his minutes or attach the same thereto, and the said Judge shall thereupon enter upon his minutes his rulings thereon.

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GENERAL RULES

For regulating the Sittings, Practice, Proceedings, Appeals to the Supreme Court and Costs in the Central District Court, and all other matters deemed expedient for the better attaining the ends of Justice, advancing the remedies of Suitors and carrying the above Chapter into effect. Made and issued by the Judges of the said Court under the provisions of the Consolidated Statutes of Newfoundland (Second Series) "Of District Courts," and approved of by the Judges of the Supreme Court on 6th December, 1892.

SECTION

1. Sittings of the Court.
2. Summons, requisites and form.
3. Summons, how signed, etc.
4. Process book to be kept.
5. Summons, when to be served.
6. Service, how effected.
7. Service on a firm.
8. Service on absent defendants.
9. Order in which causes are to be tried.
10. Defendant to state grounds of defence before trial.

SECTION

11. Set-off.
12. Default.
13. Amendments.
14. Execution.
15. Form of Writs of *Fieri Facias*.
16. Attachment Warrants.
17. Appeal.
18. Transmission of appeals.
19. Costs.
20. Costs on appeal.
21. Forms.

1. The Court shall sit every day when business may require.

2. All Summonses issued out of the Court shall be in accordance with the form in Schedule A., and shall have attached thereto or written thereon particulars of the plaintiff's demand, or a short description of a legal cause of action. No seal shall be requisite upon such Summons.

3. Every Summons shall be signed by one of the Judges of the District Court or by the Clerk of the Court, who shall not be required to issue any Summons without

Administration of Justice,

first having been paid the fee for the same and for the service thereof unless leave be given by a Judge, upon sufficient affidavit, to sue in *forma pauperis*.

4. A Process Book shall be kept, in which all causes shall be entered, and which shall contain the number of each Summons, the date of its issue and return, the names of the plaintiff and defendant, the amount sought to be recovered, and a short description of the cause of action; also the judgment in each cause, and its date and particulars, and how such judgment is satisfied, by execution or otherwise.

5. Every Summons shall be served at least the day before the date of its return.

6. Service upon a resident defendant personally, or on his wife, his clerk or his servant, at his known place of residence or business, shall be deemed sufficient service. Provided that, if it be shown on oath that service effected upon any person other than the defendant did not come to his knowledge, he may in case of default be let in to defend upon such terms as the Court may prescribe.

7. Service on one partner in a firm shall be sufficient service for all the partners; and in proceedings it shall not be necessary to name all the partners, but the name of the firm alone shall be sufficient.

8. Where a defendant or defendants reside out of the colony, but have a place of business or a resident partner or an agent therein, service of the Summons shall be effected upon the resident partner or agent, or person in charge of the place of business of such defendant.

9. Every cause shall be liable to be tried on the return of the summons, and shall be tried in the order of its return, except in the case of continued causes, which shall be tried first in their order on the day to which they are continued.

10. Before the trial of any cause shall commence the defendant shall state the grounds of his defence, either verbally or in writing, which statement shall be entered on the Summons and in the Record Book, and shall bind the defendant, subject to amendment, in the discretion of the Court.

11. Where the defendant relies upon a set-off, counter-claim or equitable defence, particulars of the same, if not already furnished to the plaintiff, must be filed in Court and a copy served on plaintiff before 3 p.m. of the day preceding the day for the trial of the cause, unless the Judge otherwise allows.

12. In cases of default, defendant, if applying promptly, may be let in to defend upon an affidavit of merits and on such terms as the Court may prescribe.

13. Amendments may be made in all process and proceedings for the furtherance of justice, upon such terms as the merits of each case may require.

14. Execution by *Fieri Facias* may issue immediately after judgment, or by order of a Judge the amount may be taken in instalments, with or without security.

15. Writs of Execution shall be according to the Form B., and no seal shall be required thereupon.

16. Attachment Warrants and Garnishee Orders shall be in accordance with the form in Schedule C.

APPEALS.

17. In all cases of appeal from the said District Court to the Supreme Court, the party appealing shall, within two days after delivery of judgment in the cause, file with the District Court, and serve a copy on the opposite party or his attorney, a written notice of appeal (1) setting forth the grounds on which such appeal is made, and on the appellant complying with the provisions of the law and giving approved Bond, with or without sureties, or other security to pay the said claim and all costs, such appeal shall be allowed.

18. On the completion of the said appeal papers, the District Judge before whom the same was tried shall forward without delay to the Chief Clerk, Supreme Court, all papers in the cause, the written evidence taken by said Judge, or a copy plainly written in either case, together with the Bond and notice of appeal. Such Bond shall be in the form in Schedule D.

(1) Written notice of appeal may be in the following form :—

vs. }

CENTRAL DISTRICT COURT.

In this cause I give notice that I intend to appeal to next sitting of the Supreme Court against the judgment in the said cause on the grounds that the said judgment is (here set forth concisely the grounds of appeal).

To His Honor Judge——, (the Judge who tried the case).

TABLE OF COSTS.

CLERK'S FEES.

For every Summons, Subpœna or other Process	25 cents.
Hearing every Cause	25 "
Entering Judgment	25 "
Issuing Attachment, Warrant and Execution	25 "
Every Affidavit and Swearing	25 "
Issuing Recognizance	25 "

BAILIFF OR CONSTABLE.

For service of Summons, Subpœna or other Process within the limits of the town of St. John's	25 "
Service of Summons, Subpœna or other process outside the limits of said town, at the rate of twelve cents per mile for every mile necessarily travelled by the officer in going from the Court House.	
Execution, including officer levying Notices and Sale	25 "
All necessary expenses attendant on execution and actually paid.	

WITNESSES.

Every necessary witness for each day's necessary attendance in Court	50 cents.
All the reasonable and necessary expenses of such witnesses, for board, lodging and travelling, when required to be authenticated by proper accounts and vouchers.	

Administration of Justice,

COUNSEL FEES.

In causes where attorneys or counsel are employed, a fee may be allowed, in the discretion of the Court, from \$1.50 up to \$5.00, according to the difficulty and importance of the case.

COSTS ON APPEAL.—CLERK'S FEES.

Filing Notice of Appeal..... 25 cents.
Drawing Recognizance..... 50 "

D. W. PROWSE,

J. G. CONROY,

Judges, Central District Court.

St. John's, Newfoundland, December 5th, 1892.

Approved of by the Judges of the Supreme }
Court, December 6th, 1892. }

F. B. T. CARTER, C. J.,

R. J. PINSENT, J.,

J. I. LITTLE, J.

FORMS.**Schedule A.****CENTRAL DISTRICT COURT.***To**Greeting :*

You are hereby required to appear and plead before the Central District Court at St. John's, on the day of , at eleven o'clock in the forenoon to an action at the suit of , who claims from you the sum of dollars and

cents, for the matters contained in the annexed particulars: And in default of your so doing the plaintiff may proceed to judgment and execution.

BY THE COURT,

This

day of

18

*Clerk of the Central District Court.**Particulars of the Plaintiff's Claim.*

employed, a
court, from
and import

25 cents.
50 "

VSE,
DY,
ict Court.

J.,

Schedule B.**CENTRAL DISTRICT COURT.**

*To the Constables of the Central District of Newfoundland,
or to any other Constable in the said District.*

WHEREAS lately in the said Court
hath recovered judgment against of
for the sum of dollars and
cents.

You are therefore hereby required to cause to be made
and levied of the moneys, goods, debts and effects of the
said , the sum of dollars and
cents; and also the sum of dollars and
cents, by the in this behalf expended for
the costs and expenses of suit; and have you the said
sum of money in our said Court immediately after the exe-
cution of this writ to be rendered to the said
and have you then there this warrant.

BY THE COURT,
St. John's, day of , Anno Domini 18 .
Clerk Central District Court.

Schedule C.
CENTRAL DISTRICT COURT.

WHEREAS a judgment has lately been given in the said Court against _____ at the suit of _____ for the sum of _____ dollars _____ cents; you are hereby required not to part with any moneys, goods, debts or effects of the said _____ which you now have in your custody, or under your control; but you are to hold the same to the amount of _____ dollars _____ cents, being the amount of the said judgment and costs, to abide the further order of the said Court touching the same.

BY THE COURT,

day of _____ 18 _____

Clerk Central District Court.

To

[GARNISHEE ORDER]

In the Central District Court _____ day of _____

189 _____
Plaintiff,

Between }

and

Defendant.

UPON reading the return of the Bailiff to the Writ of Attachment against the said defendant, at the suit of the said plaintiff: it is ordered that _____ do appear in the Court on _____ next, the day of _____, at _____ o'clock _____ to be examined on oath touching the amount due from _____ to the said defendant and attached in _____ hand in the above cause.

BY THE COURT,

Clerk of the Central District Court.

On motion of Mr. _____
of counsel for the plaintiff. }

This attachment not to be raised but by written notice.

*Administration of Justice,***Schedule D.**

[BOND ON APPEAL.]

Know all Men by these Presents that
 We of hereafter called the appel-
 lant, and of are held and firmly
 bound unto the said respondent, in the sum
 of dollars, and in the sum of
 dollars, to be paid to the said and his as-
 signs, if the said appellant shall fail in the condition under-
 written.

Whereas in the Central District Court judgment was
 lately given against the said appellant, in the cause of
 vs. and
 the said appellant is dissatisfied with the said judgment,
 and has given notice of appeal to the next sitting of the
 Supreme Court against such judgment;

Now the condition of this obligation is such that if the
 said appellant shall, in the next following sitting of the
 Supreme Court, prosecute such appeal with effect and
 satisfy the judgment of the said Court thereon, and pay
 such costs as may be ordered, then this obligation to be
 void, otherwise to remain in full force and effect.

Signed, Sealed and Delivered }
 in the presence of }

○
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 ○

COURTS OF QUARTER SESSIONS.

CIVIL JURISDICTION.

1.—Courts of General and Quarter Sessions shall be holden in this island and its dependencies at such places with jurisdiction over such extent of district as hath been heretofore appointed, or as may be hereafter appointed by the proclamation of the Governor

2.—The Courts of General and Quarter Sessions shall be holden on the first Monday of January, April, July and October, and shall sit by adjournment from time to time until the business pending therein respectively shall be disposed of, and there shall be no necessity for any proclamation thereof.

3.—The said Courts may hear and determine in a summary way all civil actions for the recovery of debt or damage to the amount of twenty-five dollars, save actions in which the title to any land or tenement may be in question; and except actions for libel or slander, replevin, malicious prosecution, and actions against any Justice of the Peace or any other public officer for acts done in the execution of his duty; and may hear and determine all disputes to any amount concerning the wages of servants in the fishery, the supply of bait, and the hiring of boats for the fishery, and the wages or share of seals of any person engaged in the seal fishery; provided that this section shall not apply to any claim or dispute in reference to damages for the alleged wrongful dismissal of any such persons engaged in the seal fishery where the damages claimed shall exceed forty dollars.

Administration of Justice—Civil Jurisdiction of Magistrates

4.—The Court of Sessions for the transaction of civil business may be held by one Stipendiary Magistrate.

5.—Stipendiary Magistrates out of session may exercise the like jurisdiction in civil cases as the Courts of General and Quarter Sessions, with the like powers and authorities.

6.—Any of the said Courts of Sessions, or Stipendiary Magistrates, before whom judgment shall be recovered, may attach moneys, goods, debts and effects, in the hands of any third party, and summon and compel by warrant, if necessary, the attendance of any party for examination, and make and enforce the observance of such order thereon as to the said Courts or Magistrates shall appear just: Provided that no such attachment shall affect executory contracts or debts not actually due.

7.—In all places where there shall be no resident Stipendiary Magistrate or when he shall be absent, any Justice of the Peace in or near the locality shall and may perform and exercise all the functions, powers and authorities, which are or might be exercised or performed by a Stipendiary Magistrate under the provisions of these Consolidated Statutes.

8.—A Stipendiary Magistrate or Justice of the Peace in any district or place where there shall be no Clerk of the Peace, or in his absence, may perform the duties of such officer.

COSTS IN CIVIL CASES.

9.—The following fees and costs shall be chargeable

Administration of Justice—Civil Jurisdiction of Magistrates.

and taken in the several Police Offices, and in the several Courts of Session in this Colony:

FEES PAYABLE TO THE CLERK OF THE PEACE IN CIVIL CASES.

Summons or subpoena.....	Cents 25
Hearing of every cause.....	" 25
Entering proceedings to judgment.....	" 25
Warrant in execution...	" 25
Recognizance.....	" 25
Every oath.....	" 25

FEES PAYABLE TO CONSTABLE OR BAILIFF.

For service of summons or subpoena.....	Cents 25
Executing every warrant to arrest the person....	" 25
If the service or execution of the process shall require the officer to travel beyond the distance of two miles, he shall be allowed for every mile travelled by him for such purpose beyond that distance, the sum of.....	" 10
For execution of any warrant, order, or final process of or from a Justice.....	" 25
When the levy under warrant, order, or final process shall exceed five dollars, then there shall be allowed to such officer on such levy, in addition to the above fee of twenty-five cents, five per cent.	

WITNESSES' FEES.

For each day's attendance of a witness.....	Cents 75
All travelling, to be computed from the residence of the witness to the place of trial and then back again, per mile.....	" 10

A printed table of the foregoing fees and costs shall be posted up in a conspicuous place in every Police Office

Administration of Justice—Civil Jurisdiction of Magistrates.

and Court of Sessions in this Colony for public inspection.

10.—Any person taking greater fees, or costs in any Police Office or Court of Session than the fees or costs hereinbefore mentioned shall, for each offence, forfeit and pay to Her Majesty the sum of fifty dollars.

11.—From and after the passing of this chapter all fees paid into the office of the several Clerks of the Peace shall be accounted for quarterly by them, and be certified by the Court of Sessions, or a presiding Justice thereof; and the total amount of such fees shall be paid into the hands of the Receiver General for the use of the Colony, and a detailed annual statement of such fees shall be laid before the Legislature.

I

FORMS.

FORM OF SUMMONS.

NEWFOUNDLAND.

Northern District,
Island Cove,
No. }

To Job Stiggings, Greeting:

You are hereby required to appear and plead before the undersigned Stipendiary Magistrate for the said District, at *Island Cove*, aforesaid, on *the* *day of* 189 , at eleven o'clock in the forenoon, to an action at the suit of *John Jones*, who claims from you the sum of ten dollars and ten cents, for the matters contained in the annexed particulars; and in default of your so doing, the plaintiff may proceed to judgment and execution.

This

day of

189 .

Stip. Mag.

Bill of Particulars.

JOB STIGGINGS,

TO JOHN JONES, DR.

189 .

Oct. 31.—One pair boots.....\$10 00
One ball hemp..... 10

\$10 10

Administration of Justice—Civil Jurisdiction of Magistrates.

2.

FORM OF SUBPENA FOR A WITNESS.

Northern District, }
 Island Cove, }
 to wit: }

NEWFOUNDLAND.

To the Constables of the Northern District.

These are to require you forthwith to summon John Smith of Island Cove, aforesaid, fisherman, to appear before the undersigned Stipendiary Magistrate for the District aforesaid, at Island Cove, in the said District, on the day of at o'clock, in the forenoon, to give evidence in a case in which John Jones is plaintiff, and Job Stiggins defendant, on the part of the plaintiff; and be you then there to certify what you have done in the premises. Herein fail you not.

Given under my hand at Island Cove, aforesaid,
 the day of A.D., One thousand eight
 hundred and ninety

T. WILLS,
 Stip. Mag.

Magistrates.

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DUNDLAND.

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 execution.

p. Mag.

ES, DR.

...\$10 00
 .. 10

\$10 10

Administration of Justice—Civil Jurisdiction of Magistrates.

3.

FORM OF EXECUTION ON JUDGMENT. (a)

Northern District, }
Island Cove,
to wit: }

NEWFOUNDLAND.

Whereas John Jones lately before me, the undersigned Stipendiary Magistrate for the said District, at Island Cove, hath recovered judgment against Job Stiggins of Island Cove, aforesaid, fisherman, for the sum of dollars and cents.

You are therefore hereby required to cause to be made and levied of the Moneys, Goods, Debts and Effects of the said Job Stiggins, the said sum of dollars and cents; and also the sum of dollar and cents, by the said John Jones in this behalf expended for the cost and expenses of the suit; and have you the said sums of money before me immediately after the execution of this writ to be rendered to the said John Jones, and have you then there this warrant.

Island Cove, day of , Anno Domini 189 .

T. WILLIS,
Stip. Mag.

EXECUTION ON JUDGMENT.

(a) The plaintiff or defendant who recovers a judgment is entitled to an execution or attachment against the losing party, whenever he demands it. The Magistrate, however, should do all in his power, whilst complying with this rule, to prevent the proceeding being unnecessarily harsh or revengeful against the losing party; and should the party claiming the execution allow time for payment, the Magistrate or Clerk of the Peace may receive the money by instalments. In levying the execution, the goods should be pointed out to the constable by the party requiring the levy, and no more should be taken than will be sufficient to satisfy the judgment and costs. The goods should be kept three days before being sold, and in the meantime a notice of the sale should be posted on the Court House door, signed by the constable, stating the time when such sale will take place and other particulars; the person requiring the execution will have to find a conveyance for the goods, if necessary. The Constable must bear in mind that he has no power to break open any doors or gates, if locked, and that under the law contained in 45 Vic., Cap. 11, Sec. 3, (1882). The working tools and implements of trade of any person, his fishing skiff or punt, the necessary cooking apparatus,

*Administration of Justice—Civil Jurisdiction of Magistrates.**Magistrates.*

I.

FORM OF ATTACHMENT ON JUDGMENT.

Northern District,)
 Island Cove,)
 to wit:)

NEWFOUNDLAND.

UNDLAND).

undersigned
 Island Cove,
 Island Cove,
 cents.

made and
 the said Job
 and also the
 ones in this
 e suit; and
 iately after
 John Jones,

(Whereas a Judgment has lately been given at Island Cove, aforesaid, before me, a Stipendiary Justice of the Peace for the said District, against Job Stiggins at the suit of John Jones, for the sum of dollars and cents), you are hereby required not to part with any Monies, Goods, Debts, or Effects, of the said Job Stiggins, which you now have in your custody, or under your control; but you are to hold the same to the amount of dollars and cents, being the amount of the said judgment and costs, to abide my further order, touching the same.

Island Cove, the day of 189 .

T. WILLS,
 Stip. Mag.

To Mr. Zechariah Snooks,
 Planter, Island Cove.

This attachment not to be raised but by written notice.

ILLS,
 tip. Mag.

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 11, Sec. 3,
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the bedding and wearing apparel of himself and his family, shall not in any case be liable to, or be taken under, attachment. In carrying out this very disagreeable work the Constable must be careful whilst doing his duty strictly to avoid all harshness and incivility.

Administration of Justice---Civil Jurisdiction of Magistrates.

5.
FORM OF GARNISHEE ORDER.

Before the undersigned Stipendiary Magistrate at
day of

Between { **and** **Plaintiff,**

 { **Defendant.**

UPON reading the return of the Bailiff to the Writ of Attachment against the said defendant, at the suit of the said plaintiff: it is ordered that do appear in the Court on _____ next, the day of _____, at _____ o'clock _____ to be examined on oath touching the amount due from _____ to the said defendant and attached in _____ hand in the above cause.

Stipendiary Magistrate.

By Sec. 4 it will be observed that a Magistrate may compel by warrant, if necessary, the attendance of a third party, called in law a Garnishee, who has or is believed to have funds in his hands belonging to the party against whom the Magistrate has given judgment.

The course to be pursued in such cases is as follows: The Magistrate on obtaining information that the garnishee has or is likely to have funds in his hands belonging to the judgment debtor will issue Form No. 5 and have it served on the garnishee by the constable. If the garnishee does not attend or informs the constable that he will not attend before the Magistrate an affidavit should be made by the constable in the following form :

Plaintiff,

Defendant.

rit of At-
the said

NEWFOUNDLAND.

to be

of Police Constable, maketh oath and saith, that on the day of he served a copy of the annexed garnishee order in the cause between and on (hereafter called the garnishee), that the said garnishee has not attended upon the said Summons (or that the said garnishee informed Deponent that he would not attend) (as the case may be, giving as near as possible the garnishee's own words.)

Sworn, &c.,

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NEWFOUNDLAND.

228.

follows:

To Police Constable. Whereas proof on oath has been made to me of the service of the Summons in this cause on (hereafter called the garnishee) and he has refused or neglected to attend before me according to my order contained in the said Summons; these are, therefore, to authorize you, the said Constable, to arrest the said garnishee and bring him before me, to compel him to obey my said order, and give information respecting the amount due to now attached in his hand, and to be further dealt with according to law. Witness my hand and seal, &c., at the

Stipendiary Magistrate.

Adulteration—Advertisements—Affray—Age.

ADULTERATION.—See *Intoxicating Liquors and Inspection of food.*

ADVERTISEMENT of lotteries, or advancing, lending, &c., money by lots, cards, tickets, &c., or by any mode of chance *whatever*—subjects offender to a fine not exceeding \$50. See *Lotteries.*

AFFRAY is the misdemeanour of fighting in public to the terror of citizens. When the Queen's Peace is thus broken, either by an impromptu fight or a premeditated battle, any private individual is at liberty to interfere in the public interest to part the combatants, and may, without any ceremony, arrest any or either of them during the continuance of the affray, and need not be afraid of using sufficient force to put an end to the fight. See also under the heads of *Riot, Peace, Preservation of*—

AGE.—The way to prove age is to produce a certificated extract of the Register of Births and to prove identity of person whose age is sought to be established. The mother's evidence is sufficient in law in all cases; where this is not obtainable general evidence of age can be given. See also under the head of *Intoxicating Liquors*, about "apparently under age of 16."

AGRICULTURAL ACTS.

Under this heading will be found grouped together the Acts for the Promotion of Agriculture, the Preservation of Sheep from Dogs, the Formation of Local Agricultural Societies, Homestead Laws, How to obtain Grants of Land, &c., with full instructions how to carry all these measures into effect. The Board of Agriculture St. John's, and the Government are very desirous that these very valuable measures should be more availed of by the public, and at their request I have consolidated the various Acts and given clear directions and forms for carrying them out legally and efficiently.

The first Act to which your attention is directed is the Sheep Preservation Act. Under this valuable measure any settlement in which one-third of the resident electors are in favour of keeping no dogs can have this law carried out by simply observing the following directions :—

PRESERVATION OF SHEEP : 1.—It shall be lawful for the duly qualified electors, resident within any area or district within this Colony, to present to the Governor in Council a petition or requisition in the form prescribed by the Schedule to this Act, or as near thereto as may be, setting forth the limits or boundaries within which such area or district is comprised, and the names of the towns, harbours, or settlements included therein, and praying for a Proclamation prohibiting the keeping of dogs within such area or district.

2.—Such petition or requisition shall be sent to the nearest resident Stipendiary Magistrate, and shall be by him (after

Agricultural Acts—Preservation of Sheep.

examination and certificate as hereinafter provided) furnished to the Governor in Council.

3.—If, upon due scrutiny of such petition or requisition, the Stipendiary Magistrate shall find that the same contains the *bona fide* signatures of one-third of the duly qualified electors resident within the limits or boundaries set forth in the said petition or requisition, he shall forthwith have a certificate to that effect endorsed upon or attached to the petition or requisition, and shall forward the same to the Governor in Council.

4.—Any Stipendiary Magistrate to whom such petition or requisition may be presented may, before certifying the same to the Governor in Council as aforesaid, require proof to be made before him of the *bona fide* signatures of any of the names subscribed to such petition, upon the oath of either the party whose name purports to be signed or of a witness to such signature.

5.—Upon receipt of any such petition or requisition containing the signatures of not less than one-third of the electors resident within any such area or district certified as aforesaid, the Governor in Council shall issue a Proclamation or Public Notice prohibiting the keeping of dogs within such area or district.

6.—From and after the date prescribed in and by such Proclamation or notice, it shall not be lawful for any person resident within such area or district to keep, or to have in his possession, or under his control, any dog within the area or district to which such Proclamation or notice shall relate, under a penalty not exceeding fifty dollars, or imprisonment

Agricultural Acts—Preservation of Sheep.

for a term not exceeding three months. This prohibition shall not apply to any person or persons travelling or passing through such areas or districts and having a licensed dog or dogs in his or their possession, charge, or control, and not at large.

The petition must be made out as follows:—

TO HIS EXCELLENCY THE GOVERNOR IN COUNCIL:—

The petition of the undersigned humbly sheweth,—

That your petitioners are duly qualified electors residing in an area or section of the electoral district of _____, comprised and bounded as follows:—

That the said area or section contains the following towns, (or harbours or settlements, as the case may be.)

That your petitioners are desirous, and humbly pray your Excellency in Council, that a Proclamation or notice be issued under the provisions of an Act passed in the Forty-seventh year of the Reign of Her Majesty Queen Victoria, Chapter 7, entitled "An Act to provide for the better preservation of Sheep, and for other purposes," prohibiting the keeping of dogs within the above described area or section of the said district, and petitioners will ever pray.

Dated at _____, the _____ day of _____, 18 ____.

[Signature of Elector.]

Witness to sign his name opposite the signature or mark of each Petitioner.

The petition when fully signed must then be brought to the nearest Stipendiary Magistrate, who will generally examine the witness carefully as to the genuineness of the signatures of the petition. Every petitioner who can write his name should do so. The Constable is the best one in most places to go round with the petition, and Col. Fawcett,

Agricultural Act—Preservation of Sheep.

who takes a warm interest in the subject, states that whenever the police can assist in carrying out the law, he has instructed them to do so.

The Magistrate will place upon the petition the following affidavit:—

NEWFOUNDLAND.

DISTRICT,)

To Wit:)

John Snooks (or as the case may be) Police Constable, residing at _____, in the said District, maketh oath and saith that the foregoing signatures are in the true and proper handwriting of the parties therein named, that the signatures of the other petitioners who have placed their mark to the said petition have all been so placed in presence of this deponent, who read over and fully explained the contents of the said petition to them; that all the said petitioners are duly qualified Electors of the District of _____, residing within the limits aforesaid, and are upwards of one-third of the resident Electors within the said limits.

(Signed),

JOHN SNOOKS,
Police Constable.Sworn before me at
day of _____, this _____
, A.D. 189 _____JOHN SMITH,
Stipendiary Magistrate.

Agricultural Acts—Preservation of Sheep.

The Stipendiary Magistrate then writes across or attaches to the petition the following certificate :—

I, John Smith, Stipendiary Magistrate, after due scrutiny of the foregoing petition, find that the same contains the bona fide signatures of one-third of the duly qualified Electors residing within the limits or boundaries set forth in the said petition.

Toad's Cove,

day of

, 189 .

JOHN SMITH,
Stipendiary Magistrate.

7.—It shall be the duty of all police constables to kill all dogs found by them in any area or district in which the keeping of dogs is prohibited under this Act, except shepherd dogs or collies, and those excepted under the next preceding section, and all such dogs not so excepted may be killed by any person whomsoever. And it shall be lawful for any person to destroy any dog kept in contravention of the provisions of this Act.

8.—After such Proclamation or notice shall have issued, as aforesaid, no new petition or requisition on the same subject shall be presented from such area or district until the expiration of ten years from the date of such Proclamation or notice; and, if no such petition or requisition be presented within three months after the expiration of such Proclamation or notice, the operation of such Proclamation or notice, with reference to any such area or district, shall be considered as agreed to by the electors of such area or district, and a new Proclamation or notice shall issue, as of course, containing the provisions of the former Proclamation or notice, which shall continue in full effect for ten years from the expiration thereof.

Agricultural Acts—Sheep-Dog Licenses.

9.—All penalties under this Act may be sued for and recovered in a summary manner before a Stipendiary Magistrate or a Justice of the Peace, and all fines shall be paid to the person who shall give information of the offence and prosecute the offender to conviction.

[This Act only applies to the Electoral District of St. John's East and West.]

SHEEP PRESERVATION.—1.—From and after the first day of July, 1888, it shall be unlawful for any person within the limits of the Electoral District of St. John's East and West, to have in his possession or on his premises any dog except as hereinafter provided.

2.—Any person may obtain from a Stipendiary Magistrate a license to keep a dog or dogs upon payment of a fee of three dollars for pointers or setters ; one dollar for spaniels, terriers and other dogs, and a license fee of five dollars for all bitches. The license, when granted, shall be of force for twelve months from the date of the issue thereof, and may be renewed from year to year upon payment of the above fees.

3.—Stipendiary Magistrates shall keep a register, in which shall be entered the name of every license, the date of the issue of license, and the description of the dog licensed.

4.—On and after the first day of July, 1888, it shall be the duty of Police Constables, and it shall be lawful for any other person, to kill any dog found at large, and not within charge, call or control of any owner or other person within the limits of the aforesaid Electoral District.

Agricultural Acts—Sheep-Dog Licenses.

5.—On and after the first day of July, 1888, persons having in possession any dog not licensed as aforesaid, shall be liable to a penalty not exceeding twenty dollars.

6.—Stipendiary Magistrates who have issued licenses under the foregoing provisions shall make an annual return to the Colonial Secretary, shewing the number of licenses issued, and the amount of money received in respect thereof, which amount they shall forward, at the time of making their said return, to the Receiver General, which return shall be made on or before the thirty-first day of December in each year.

7.—It shall be the duty of the Magistrates for the Central District, on or before the thirty-first day of December in each year, to make returns to the Colonial Secretary of all damage and loss to sheep or cattle caused by dogs within the said Electoral Districts, which shall have been judicially proved before them, with the names of the persons who have sustained such damage and loss, and the amount of damage and loss which such persons have respectively sustained.

8.—On and after first day of February in each year, the fund arising from the issue of dog licenses under this Act shall be divided proportionally among such persons as may have sustained loss or damage to sheep or cattle by dogs within the Districts of St. John's East and St. John's West during the preceding year, ending thirty-first day of December, where such persons have not been otherwise compensated for such loss or damage: Provided that such persons shall have given notice of such loss or damage before the said first day of February, and provided that proof of such loss or damage be made to the satisfaction of the Stipendiary Magistrates of the Central District: Provided also that no person

Agricultural Acts—Agricultural Societies.

shall receive a larger sum than the loss that he may prove that he has sustained.

9.—After providing for the compensation aforesaid, the balance of said fund (if any) shall be handed over by the Clerk of the Peace for the Central District to the Receiver General, and shall be applied by the Governor in Council to public works or improvements in the said Districts of St. John's East and St. John's West.

10.—Penalties imposed by this Act may be recovered in a summary manner before a Stipendiary Magistrate by any person who shall sue for the same.

11.—No penalty shall attach in respect to the keeping of any dog under six months' old without a license, but dogs under that age shall not be permitted to go at large.

[*Taken from the Crown Lands' Act, 52nd Vic., Cap. 8,
Consolidated and Revised to July, 1891.*]

AGRICULTURAL SOCIETIES.—An Agricultural Society may be organized in any locality wherever twenty-five persons or more, being residents of the locality, shall become members thereof by signing a declaration in the form of Schedule A to this Act, and by each member paying not less than one dollar annually to the funds thereof. A true copy of such declaration shall, within one month after the money has been so paid, be transmitted to the Secretary of the Board of Agriculture, St. John's.

Agricultural Acts—Agricultural Societies.

SCHEDULE A.

We, whose names are hereto subscribed, agree to form ourselves into a Society under the provisions of the Act 52nd Vic., Cap. 8, to be named the *Agricultural Society*; and we severally agree to pay to the Treasurer of the said Society, towards the funds thereof, the sums set opposite our respective names.

Names of Subscribers.

Sums Subscribed.

93.—When any Society shall be so organized, such Society shall be entitled to draw annually, from any moneys under the control of the Board, an amount equal to double the amount of the subscriptions of the members thereof so raised and paid; the payment of such subscriptions to be certified upon oath by the Secretary or Treasurer of the Society making application, within one month after the annual meeting of such Society.

INSTRUCTIONS FOR FORMING AN AGRICULTURAL SOCIETY.—As soon as convenient after the money has been collected the local Agricultural Society should be organized by calling a meeting of the subscribers, when the name of the Society must be agreed on, and a President, Vice-President, Secretary, Treasurer, and not more than five Directors, elected by the subscribers only, as soon as the Society is so organized. The

Agricultural Acts—Agricultural Societies.

Secretary or Treasurer must go before a Magistrate within one month after the first annual meeting and make the following affidavit :—

NEWFOUNDLAND.

DISTRICT, }
To Wit : }

I, *John Snooks*, (*Secretary or Treasurer, as the case may be*), of the Agricultural Society of Snug Cove, in the District of _____, do swear that the amounts set opposite the names of the several members of the said Society have been paid within one month after the first annual meeting of the said Society, and the foregoing is a true copy of the declaration signed by the said subscribers.

(Signed), JOHN SNOOKS.

Sworn before me at _____, this _____ }
day of _____, A.D. 189 . }
(Signed), JOHN SMITH, J.P.

As soon as this affidavit is sworn to, the declaration, or a copy thereof, must be forwarded to the Secretary of the Board of Agriculture, St. John's, and the local Agricultural Society will then be entitled to draw annually double the amount of their subscription. The Society must strictly adhere to the several rules herein laid down for their guidance.

94.—The objects of such Agricultural Societies shall be to encourage and promote the introduction of improved stock, seeds, fruit, roots, implements, methods of culture and improvement in farm buildings and domestic manufactures; to hold shows and exhibitions; to award premiums for excellence, and to diffuse information concerning agriculture and

Agricultural Acts—Agricultural Societies.

horticulture. The funds of such Societies, derived from the subscriptions from members or the public grant, shall not be expended for any object inconsistent with those above mentioned.

95.—The annual meeting of the Societies shall be held on the first Monday in December in each year, or as near thereto as circumstances will permit, when they shall each elect a President, Vice-President, Secretary and Treasurer, and not more than five Directors.

96.—The officers appointed at the formation of such Societies shall, until the election of their successors at the annual meeting, exercise all the powers vested in such Societies by this Act; they shall hold meetings, of which at least two days' notice in writing shall be given, and at any such meeting five shall be a quorum.

97.—The said officers and directors may, at any such meeting, make, alter and repeal bye-laws and rules for the management of such Society, such bye-laws and rules to be subject to the approval of the Board, and not to come into force until so approved.

98.—Such officers and directors shall, in addition to the ordinary duties of management, present, at the annual meeting in December, a report of the proceedings of the Society during the year, in which shall be stated the names of all the members of the Society, the amount paid by each, the names of all persons to whom premiums were awarded, with the name and class of the animal, article or thing in respect of which the same was granted, together with such remarks upon the general agricultural interests of the locality as they

Agricultural Acts—Homesteads.

may consider pertinent, and a statement of the receipts and disbursements of the Society during the year, and a copy thereof, certified by the President and Secretary to be correct, shall be sent to the Board within one month thereafter.

99.—If any Society fail or neglect to render such account and report, or shall expend any portion of its funds for purposes other than those mentioned in Section 94, it shall forfeit all claim to the grant mentioned in the ninety-third Section of this Act for the year next succeeding, unless the Board shall order otherwise.

100.—The Board may, at any time, appoint a person to inspect the books and accounts of any Society receiving aid from the Board under the provisions of this Act, and all officers of such Society, when required so to do, shall submit its books and accounts to such inspection, and truly, to the best of their knowledge, answer all questions put to them in relation thereto, or to the funds of the Society.

HOMESTEAD LAW.—This law is largely used in Canada, and is a very valuable provision for settlers who wish to make a permanent home for their families. Full information with regard to its general application will be found in the consolidated and revised Crown Lands Acts, published last year. For further particulars apply to the Surveyor General, St. John's.

[*Homestead Law, 36th Victoria.*]

24.—That from and after the passing of this Act, every person who shall settle upon any of the wilderness lands of

Agricultural Acts—Homesteads.

this Colony, and cultivate and improve the same, and erect a dwelling house thereon, shall be entitled to an estate of Homestead therein, not exceeding twenty acres; and such Homestead, and all right and title therein, shall be exempt from attachment, levy, or execution, sale for payment of his debts or other purposes, and from the laws of conveyance, distribution, and devise, or bequest, except as hereinafter provided.

25.—To constitute such an estate of Homestead and to entitle property to such exemption, it shall be set forth in the grant or deed of conveyance, by which the property is acquired, that it is designed to be held as a Homestead, or after the title has been acquired, such design shall be declared in writing, duly signed, acknowledged, and recorded in the registry of the district where the property is situated, according to the form in the Schedule A hereto annexed; but the acquisition of a new estate of Homestead, in either of the said modes, shall defeat and discharge any estate or right of Homestead previously existing; but no person shall hold, exempted as a Homestead, land of greater extent than twenty acres. And for every registration under this Act, there shall be paid to the Registrar the sum of one dollar.

[*Homestead Rights, 47th Victoria.*]

32.—Any person who is sole head of a family, or any male who has attained the age of eighteen years, may, upon payment of a fee of ten dollars, obtain a location ticket for any quantity not exceeding one hundred and sixty acres of such unappropriated Crown lands as shall be set apart by the Governor in Council for the purpose of securing a Homestead right. The application shall be in the form prescribed by Schedule B or Schedule B 1 to this Act, and the location ticket in the form prescribed by Schedule C to this Act.

Agricultural Acts—Homesteads.

33.—To secure a grant in fee for a Homestead the person claiming such Homestead right must—

- (1.) Commence clearing and improving on the lot assigned him within six months after the date of his location ticket.
- (2.) Build thereon, within two years from such date, a house fit for habitation of not less dimensions than twenty feet by sixteen, and shall clear and cultivate not less than three acres by sowing or planting the same.
- (3.) Cultivate and clear not less than six acres within three years from such date, and each year actually and continuously cultivate all the land cleared during such three years.
- (4.) Reside actually and continuously upon such land for the term of three years next succeeding such date, and thence up to the issue of the grant.

34.—In cases where any person shall have entered upon Crown Lands previous to the passing of this Act, and made thereon meritorious improvements, which amount to a compliance with the foregoing conditions, the Governor in Council may, upon satisfactory evidence of such improvements having being made, grant in fee to such person, for a Homestead, land not exceeding one hundred and sixty acres upon payment of a fee of five dollars.

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Agricultural Acts—Grants of Land.

HOW TO OBTAIN A GRANT OF LAND.—13.—The Governor in Council may issue grants in fee, not exceeding twenty acres in any one grant, of unappropriated Crown Land not included in township surveys to any persons making applications therefor, at a cost of not less than thirty cents per acre, the land applied for having been in every case surveyed by a surveyor at the cost of the applicant and reported upon by the surveyor in favor of the applicant.

15.—The Governor in Council may issue licenses of occupation of unappropriated Crown Land, on payment of a fee of five dollars for each one hundred and sixty acres, for not less than one hundred and sixty acres, nor more than six thousand four hundred acres, subject to the condition that the licensee shall, within two years, settle upon the land one family for each one hundred and sixty acres, and, for a period of five years, cause to be cleared at least two acres per year for every hundred acres so licensed, and continue the same under cultivation, and continue the same families thereon, or others in lieu thereof, for a period of ten years from the expiration of the said five years; upon the performance of which conditions the licensee shall be entitled to a grant in fee of the said land.

17.—The Governor in Council may issue licenses of occupation in quantities not exceeding fifty acres, of any unappropriated lands outside of township surveys, for a term not exceeding five years, to such persons as shall be desirous of permanently settling on and cultivating the same. To such persons as shall have *bona fide*, actually and continuously occupied and resided on the land so licensed for a period of five years from the date of the license, and shall

Agricultural Acts—Forms.

have cultivated within that period two acres of the said land, the Governor in Council may issue grants in fee for the quantity of land specified in the license.

SCHEDULES.**FORM OF SCHEDULE A. (36TH VICTORIA.)**

To all to whom these Presents shall come, Greeting:

I, _____, of _____, under and by virtue of the provisions of the Homestead Act of 1873, hereby declare that I design and intend that all that piece or parcel of land situate at [here state locality] and owned by me, and bounded as follows, [here set out boundaries] shall be held by me as a Homestead under the said Act.

In Witness whereof I have hereunto set my hand this _____ day of _____, A.D. 18 ____.

The execution of the above was acknowledged before and deposited with me, for registration, this _____ day of _____, at _____ o'clock, by the said A.B.

C. D.
Registrar.

SCHEDULE B.—(See Section 32.)**FORM OF APPLICATION FOR A HOMESTEAD RIGHT.**

I, _____, of _____, do hereby apply for a homestead of _____ acres of land situate [here describe the land] under the homestead provisions of "The Crown Lands Act, 1884," and I declare that I am over eighteen years of age; that I have not previously obtained a homestead under the provisions of the said Act; that there is no person residing or having improvements on said land; and that this application is made for my exclusive use and benefit, with the intention of residing upon and cultivating the said land.

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Agricultural Acts—Forms.

SCHEDULE B I.—(See Section 32.)

FORM OF APPLICATION BY AGENT FOR HOMESTEAD RIGHT.

I, _____, of _____, agent for _____, of _____, do hereby on behalf of the said _____ apply for a homestead of _____ acres of land situate [here describe the land] under the homestead provisions of the "Crown Lands' Act, 1884," and I declare that the said _____ is over eighteen years of age; that he has not previously obtained a homestead under the provisions of the said Act; that there is no person residing on or having improvements on said land; and that this application is made for the exclusive use and benefit of the said _____, with the intention of his residing upon and cultivating the said land.

SCHEDULE C.—(See Section 32.)

FORM OF LOCATION TICKET.

This is to certify that _____ is entitled, under the provisions of "The Crown Lands' Act, 1844," to enter upon [here describe the property] containing _____ acres, for the purpose of securing a homestead right in respect thereof.

ALIENS---NATURALIZATION OF.

ALIENS—NATURALIZATION OF.—1.—Any alien, not being under any disability, who shall desire to become naturalized as a British subject, and who shall have resided in this Colony for a period of five years next preceding the date of the declaration hereinafter mentioned, may make and sign before a Stipendiary Magistrate a declaration in duplicate in the form of Schedule A to this Act.

2.—After such declaration in duplicate shall have been so made, signed, and deposited with such Stipendiary Magistrate, he may sign and deliver to such alien a certificate of naturalization in the form of Schedule B to this Act.

3.—Every alien receiving such certificate of naturalization, shall forthwith take the oath of allegiance and subscribe the same in duplicate as set forth in Schedule C to this Act, and until such oath shall have been taken and subscribed, the certificate of naturalization shall not be valid.

4.—Such Stipendiary Magistrate administering the oath of allegiance shall certify under his hand, on such certificate of naturalization, the fact of the same having been taken and subscribed in the form of Schedule D to this Act, which certificate shall be evidence of its contents.

5.—One copy of the said declaration and oath of allegiance so made, signed, taken and subscribed, shall be transmitted by the Stipendiary Magistrate to the Colonial Secretary,

Aliens—Naturalization of.

and the other to the Chief Clerk of the Supreme Court, to be filed in their respective offices.

6.—Every alien shall pay to the Stipendiary Magistrate a fee of two dollars and fifty cents upon receiving the said certificate of naturalization, two dollars of which he shall transmit to the Receiver General for the use of the Colony, and retain fifty cents to his own use.

7.—An alien, having complied with the provisions of this Act, and receiving such certificate of naturalization, shall be entitled to all the rights, privileges and immunities, and subject to all the liabilities of British subjects in this Colony; provided that nothing in this Act contained shall qualify an alien to be the owner of a British ship.

8.—Any person wilfully and corruptly making or subscribing any declaration under this Act, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor and be liable to imprisonment with or without hard labor, for any term not exceeding twelve months.

9.—In this Act, if not inconsistent with the context or subject-matter, the term "disability" shall mean the state of being an infant, lunatic, idiot, or married woman.

10.—Chapter 72 of the Consolidated Statutes, entitled "Of the Naturalization of Aliens," is hereby repealed.

11.—This Act may be cited as "The Act for the Naturalization of Aliens, 1891."

*Aliens—Forms.***SCHEDULES.****FORM OF SCHEDULE A.****COLONY OF NEWFOUNDLAND.**

To wit. }

† , of † , in the said Colony of Newfound-
land, † , heretofore of † , declare that I have
resided in the said Colony of Newfoundland for the period of
five years next preceding the date of this declaration, and that
I am desirous of becoming a naturalized British subject.

Signed and declared by the said
before me, at aforesaid,
this day of , 189
C. D.,
Stipendiary Magistrate.

Declarant.

- * Insert place of residence of stipendiary magistrate.
- † Name of declarant, residence, and occupation.
- ‡ Former residence of declarant and nationality.

FORM OF SCHEDULE B.**COLONY OF NEWFOUNDLAND.**

I certify that * , heretofore of † , having
complied with the provisions of "The Act for the Naturaliza-
tion of Aliens, 1891," shall, upon taking the oath of allegiance,
become a naturalized British subject, and shall from thence-
forth be entitled to all the rights, privileges and immunities,
and subject to all the liabilities of a natural-born British sub-
ject, as provided by the said Act.

Dated at , in the said Colony,
this day of , 189 .

A. B.,
Stipendiary Magistrate.

- * Name, residence and occupation of person desiring to be-
come naturalized.

- † Former residence and nationality.

Aliens—Forms.

FORM OF SCHEDULE C.

COLONY OF NEWFOUNDLAND.

I, * , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her Heirs and Successors. So HELP ME GOD.

Sworn before me, at , in the said
Colony, this day of , 189 .

A. B.,
Stipendiary Magistrate.

* Name of person.

FORM OF SCHEDULE D.

COLONY OF NEWFOUNDLAND.

I, * , hereby certify that † has this day taken and subscribed the oath of allegiance as a British subject, in accordance with "The Act for the Naturalization of Aliens, 1891."

Dated at , in the said Colony,
this day of , 189 .

* Name and residence of stipendiary magistrate

† Name, residence and occupation of alien applying to be naturalized.

APPEAL---APPRENTICES.

APPEAL.—There is no appeal in summary jurisdiction except by Statute. The law on this subject will be found under the various heads: *Administration of Justice; District Courts; Criminal Law, etc.* In all cases under summary jurisdiction there is an appeal to the Supreme Court on points of law. See under the head *Stating a Case*.

APPRENTICES AND MINORS.—1.—Any Justice shall, upon application made to him, consent to and approve by writing, under his hand, of an indenture of apprenticeship that shall be produced before him (a): Provided upon examination he shall be satisfied of the good moral character and other requisite fitness of the proposed master or mistress; whereupon such indenture shall be as binding upon the master or mistress, apprentice and all parties concerned, as if such master or mistress, apprentice or other parties had been at the time of the execution of such indenture of full age.

2.—If any master or mistress of an indentured apprentice shall mis-use or ill-treat his or her apprentice (b), or if the apprentice shall not do his or her duty, or if either party shall have cause of complaint against the other, any Justice

(a) Unless they are written indentures, approved by a Magistrate, he should not issue a summons or warrant under this chapter.

(b) Master or mistress illtreating apprentice, or not furnishing him with sufficient food, also punishable, criminally, under Imperial Act, 24 & 25 Vic., s. 26.

Apprentices and Minors.

within the town or district where the master or mistress resides shall, upon such complaint being made upon oath before him, cause the parties and their witnesses to be brought before him by summons or warrant, and if, upon enquiry into such complaint, default shall be found in the master or mistress, such Justice may either impose a fine upon him or her not exceeding five dollars, to be levied by distress and sale of the offender's goods and chattels, or discharge such apprentice from his apprenticeship, upon which discharge being made in writing under the hand of such Justice, the indenture shall be void; and if default shall be found in the apprentice, such Justice shall order such abatement to be made out of his or her wages or allowance, or cause the apprentice (if a male) to be imprisoned, with or without hard labor, for any period not exceeding ten days; and in addition to such abatement or imprisonment, such Justice may discharge the apprentice by writing under his hand, whereupon the indenture shall be void.

3.—Nothing in any indenture of apprenticeship shall be of any force or effect to require the executor or administrator of a deceased master or mistress to keep or maintain the apprentice more than one month after the death of such master or mistress, and at the expiration of such month the indenture shall be void.

4.—Any person harboring an indentured apprentice after notice, shall be liable to a penalty not exceeding fifty dollars, to be recovered before any Justice in a summary proceeding, and by levy under his warrant of the offender's goods and chattels; and if such warrant shall not be satisfied, the Justice may commit such offender to gaol for any period not exceeding twenty days.

Apprentices and Minors.

5.—All penalties imposed under this chapter shall be paid to the party making the complaint, or on whose behalf the same shall have been made.

6.—FORM OF INDENTURE.

This Indenture, made at _____, in the Island of Newfoundland, the _____ day of _____, in the year of our Lord one thousand eight hundred and ninety-_____, between _____.

Witnesseth that the said _____ by and with the consent and approval of _____, Esquire, a Justice of the Peace, for the Island aforesaid, testified by his signing these presents, hath put, placed, and bound, and by these presents doth put, place, and bind himself unto the said _____, to dwell and serve after the manner of an apprentice, for, during, and until the full term and time of _____ years, to be computed from the _____ during all which time the said apprentice his said master faithfully shall serve, his secrets keep, and all his lawful commands everywhere gladly do: hurt to his said master he shall not do, nor waste, nor embezzle his goods, nor suffer such things to be done by others, without to the utmost of his power giving notice of and preventing the same. At cards, dice, or other unlawful games, he shall not play; ale houses, taverns, or houses of ill-fame, he shall not frequent; nor absent himself by day or by night without leave first had and obtained; but in all things towards his said master and those of his family as a good, honest and faithful apprentice demean himself: and the said _____ doth hereby covenant and agree to teach and instruct, or cause the said apprentice to be taught and instructed, in the trade, art, or mystery of a _____, and also during the said term provide for and give the said apprentice good and sufficient meat, drink, and lodgings; and shall pay or cause to be paid to said apprentice during the said term, wages as follows; that is to say, \$—— [so much a year, or a lump sum as agreed on.]

In witness whereof the said parties to these presents, their hands and seals interchangeably have set, the day and year first above written.

Signed, sealed and delivered,)
in the presence of)

Approved of June 10, 189 .

T. WILLS, J.P. ○

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ARREST.

ARREST.—In order to arrest a prisoner there must be an actual touch or restraint of the offender. There is no special formula to be used in making an arrest; the words—"you are my prisoner," or, "I arrest you in the Queen's name,"—either will do. There should be no unnecessary violence used in making an arrest; under all provocation a constable should keep his temper even if in danger of his life. He should never show anger or vindictiveness towards his prisoner. Whilst it is always the safest course to obtain a warrant, there are numerous instances in which a constable must act instantly, and without a warrant in cases of serious crimes, murder, &c., promptitude and smartness are the most essential elements in good police work; delays are proverbially dangerous. In carrying out a constable's duty unnecessary delay is very liable to produce a failure. If the constable is aware that a serious crime has been committed, or, he has a strong suspicion amounting almost to conviction in his mind, he should arrest the offender at once.

FELONIES.—A constable must arrest without a warrant any one whom he sees in the act of committing a felony. He may also arrest any one whom he may have just cause to suspect to be about to commit a felony. If the constable suspect a person to have committed a felony he should arrest him, and if he have reasonable grounds for his suspicions he will be justified, even though it should afterwards appear that no felony was in fact committed; but the constable must be cautious in thus acting on his own suspicions.

Arrest—Misdemeanors—Arrest by Private Individuals.

A constable can also arrest any one whom another positively charges with having committed a felony, or whom another suspects of having committed a felony, if the suspicion appears to the constable to be well founded, and provided the person so suspecting go with the constable.

MISDEMEANORS.—As a rule a constable cannot arrest without warrant in cases of misdemeanor, but where a misdemeanor is committed in the presence of the constable he may arrest the offender without a warrant if the circumstances render such a course necessary, and the delinquent is not known. Information of the commission of a misdemeanor should not under ordinary circumstances be followed by arrest with warrant, except in case of escape from custody, or attempted felonies of a serious character, or in cases where arrest is authorised under some special statute.

ARREST BY PRIVATE INDIVIDUAL.—If a *felony* has been committed the offender may be arrested by any person on reasonable suspicion of his guilt, but a private person can only arrest *at his peril* for crimes not committed in his presence, whereas a constable can arrest on *reasonable suspicion*. A private person may apprehend without a warrant on view of a breach of the peace, and hand over the offender to a constable; and he is justified in giving in charge, and a constable in arresting without a warrant, a party who has been guilty of a breach of the peace if there are reasonable grounds for apprehending its continuance or renewal. The constable should, however, require the person making the charge to accompany him to the police station, or before a magistrate. In all cases of common assault the constable should endeavour to obtain for the complainant the name and address of the person he accuses.

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Arrest—Breaking Doors—Time of Arrest—Breach of Peace.

WARNING.—If a constable finds his own exertions insufficient to effect an arrest he ought to warn one or more of the bystanders, "in the Queen's name," to assist him, and it is an indictable misdemeanor in any one so warned to refuse. If a prisoner escape he may be retaken, and in immediate pursuit the constable may follow him into any place or any house. By our local law persons refusing to assist a constable may be fined \$10 or 10 days imprisonment. Trial summary.

BREAKING DOORS.—Whenever a person is lawfully arrested for any cause and afterwards escapes and shelters himself in a house, the doors may be broken open to retake him.

If a party accused of felony takes refuge in a house, or if persons are fighting furiously in a house, or a felony appears likely to be committed, a constable may *break open the doors*, if necessary, to get in, provided he first demands admission, stating who he is and his business; but the breaking open of outer doors is so dangerous a proceeding, that the constable never should resort to it except in extreme cases, and when an immediate arrest is necessary.

TIME AND PLACE OF ARREST.—A person may be apprehended in the night as well as the day, and in any place. Arrests may be made on a Sunday in any case of indictable offence.

BREACH OF THE PEACE.—A constable may apprehend without warrant on view of a breach of the peace, but not after the affray is over, unless it is evident a serious assault has been committed, or a dangerous wound given, or that there is ground to apprehend a renewal.

When the offence has not yet been committed, but when a breach of the peace is likely to take place, as when persons are openly preparing to fight, the constable should take the parties concerned into custody.

Arrest—Abusive Language—Forcible Entry, &c.—Summary.

ABUSIVE LANGUAGE.—If persons be merely quarrelling or insulting each other by words the constable has no right to take them into custody, but he should be ready to prevent a breach of the peace.

If a person annoys another by abusive language or constantly following him, whereby a breach of the peace may occur, such person can be proceeded against and summoned by the party aggrieved.

FORCIBLE ENTRY, &c.—If a person forcibly enters the house of another, the constable may, at the request of the owner, turn him out directly; if he have entered peaceably, but having no right to enter, and the owner request the constable to turn him out, the constable should first request him to go out, and unless he do so, he should turn him out, in either case using no more force than is necessary for the purpose.

SUMMARY.—The following is a summary of the principal crimes and offences for which a constable can arrest offenders without a warrant.

Offences against the person [24 & 25 Vict. c. 100].—Murder, manslaughter, wounding, &c. . . . Abduction, rape, using means to procure abortion, concealment of birth, child stealing, bigamy, sodomy, and bestiality.

Offences against property [24 & 25 Vict. c. 96].—Robbery, burglary, housebreaking, stealing from dwelling-house, &c., larcenies generally, embezzlement, receiving stolen goods, obtaining goods and money by false pretences, fraud, &c.

In all cases of fraud, however, the constable will do well to protect himself by the warrant of a justice.

Arrest—Arrest by Private Individuals.

Malicious injuries [24 & 25 Vict. c. 97].—Arson, injuries to houses, goods, &c., injuring trees, shrubs, vegetable productions, fences, walls, &c., killing or maiming cattle or other animals.

Also the crimes of forgery and offences against the coinage, uttering counterfeit coin, &c. [24 & 25 Vict. cc. 98, 99.]

Persons can also be arrested without warrant for offences against the Penal Servitude and Prevention of Crimes Acts; and for the crimes of treason, smuggling, conspiracy, night poaching, &c.

The following persons are liable to arrest without warrant: deserters, pedlars without license, persons found at night in any highway, &c., whom the constable may suspect to be about to commit a felony, persons committing breaches of peace, offenders against Vagrant Act.

The Vagrant Act [5 Geo. 4, c. 83] divides vagrants into three separate classes—viz., idle and disorderly persons, rogues and vagabonds, and incorrigible rogues. Any officer or constable may at once arrest and take before a magistrate persons committing offences.

A constable can arrest persons obstructing him in execution of duty.

ARREST BY PRIVATE INDIVIDUALS.—By our local law persons committing malicious injury to property and to electric telegraphs may be arrested without a warrant. [See Manual, page 136].

11.—The person so apprehended is in all cases to be taken forthwith, that is as soon as reasonably may be, before

Arrest—Arrest by Private Individuals.

some neighbouring Justice of the Peace, to be dealt with according to law. When either of these courses is duly taken, it is clear that there is no necessity, as under Jervis's Act, for a previous information, summons or warrant, the proper course is for the person taking the offender before the Justice to state to him the offence for which he has apprehended the offender, and the Justice may there and then proceed to hear and determine the case or postpone the hearing, to such time and place as in his discretion may seem meet; (a) of course when once the offender is so brought before the Justice he has jurisdiction to try and will try it as in ordinary summary cases.

a. *Greaves*--Notes. Criminal Law, Consol. Acts, p 370.

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Arson.

ARSON.—Setting fire to a building, ships, woods, corn, coal mines, &c., is a felony, and is all regulated by the Consolidated Criminal Statute 24 & 25 Vict. c. 97. There must be an actual fire or burning of the building, but there need not have been a blaze, any burning of any portion of the building will be sufficient. A man may be punished for burning his own or any other property when the act is committed with intent to defraud. It is not necessary to state the intent to defraud or injure any particular person, but it must be proved that the act was done with intent to injure or defraud some person. Attempts to commit arson, felony. *Punishment*, imprisonment not exceeding two years; and if a male under the age of 16 years, with or without whipping.

“Whosoever shall unlawfully and maliciously set fire to any dwelling house, any person being therein, shall be guilty, of felony.” Whenever there is any suspicion of arson police should carefully examine the building and note any evidence of incendiarism. Pieces of wood, shavings, &c., saturated with kerosene or other inflammable substance, shavings strewed about and partially burnt should be kept to be produced at trial. Any other evidence of fraud should be noted, such as removal of furniture, stock in trade, &c.; over insurance, &c. Arson is a secret crime and very difficult to prove.

ASSAULT.

ASSAULT DEFINED.—14.—An assault is an attempt by force, or violence, to do bodily injury to another. It is an act of aggression done against or upon the person of another without his consent; not necessarily against his will, if by that is implied an actual resistance or expression of objection made at the time. It is not necessary that the party should receive an injury, striking or throwing a stone, or riding at another, setting a dog at him, or striking a horse whereon another is riding, whereby he is thrown, or holding up the hand in a threatening manner, all are assaults, a kiss if unwelcome is as much an assault as a cuff, any other circumstances denoting at the time an intention, coupled with a present ability, of using actual violence against the person, will constitute an assault. If the person be actually struck or even touched, the offence is a battery, which includes an assault. But in order to constitute an assault punishable by the criminal law, the act must have been done with a hostile intention; for instance, placing the hand on another person's shoulder to call his attention to the hose of a fire engine, is not such an assault. Mere words do not amount to an assault. A breach of the peace can only be justified when used to prevent a breach of the peace, although the circumstances of the provocation may be taken into consideration in awarding the punishment. It is clearly established by the recent case of *R. v Pearson*, 39 L. J. (M. C.) 76, and 22 L. T. (N.) 126, that Justices

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Assault—Common Assault.

have no summary jurisdiction in any case of assault where a question of title arises, although there may have been an excess of force or violence in the assault. The remedy will be by indictment. In a prosecution for assaulting the constable, it is sufficient to prove that he acted in that character without producing his appointment, although he may have been appointed under a local Act. [*Berrymann v. Wise*, 4 T.R. 366, and *Butler v. Ford*, 1 C. & M. 622.] *Stone*, p. 62.

COMMON ASSAULT.—Where any person shall unlawfully assault or beat any other person, two Justices of the Peace upon complaint (a) by or on behalf of the party aggrieved, may (b) hear and determine such offence—*Punishment*, on conviction, at the discretion of the Justices, either by imprisonment in gaol for not exceeding two months (c), or else such fine as shall appear to them to be meet, not exceeding, together with costs (if ordered), the sum of twenty-four dollars; and if not paid, either immediately after conviction or within

(a) The complaint, under the 42nd and 43rd sections, need not be upon oath unless a warrant be granted; the proceedings being, under the 76th section, regulated by Jervis's Act, and there being nothing in that Act which requires the information on which a summons issues to be on oath. The complaint under s. 42, may be "by or on behalf of the party aggrieved," thus enabling a parent or a friend to complain on behalf of a child, and under s. 43 by the "party aggrieved or otherwise," i.e., either the party or a stranger. [25 J. P. 658.]

(b) The jurisdiction of the Justices will not be taken away by the parties settling the matter without the sanction of the Justices. They can still hear, and if the evidence be sufficient, convict of the offence. [*Ex parte Bryant*, 27 J. P. 332.]

(c) If an assault on a constable be such as might be justified in point of law, if the complainant had not been acting in the execution of his duty as a Constable, it will be necessary to proceed for the offence of assau'ting him in the execution of his duty.

Assault—Assault on any Constable.

such period as the said Justices shall appoint, imprisonment in gaol, with or without hard labor, (a) for not exceeding two months (b), unless such fine and costs be sooner paid [24 & 25 Vic., c. 100, s. 42.]

ASSAULT ON ANY CONSTABLE.—Where any person is convicted of an assault on any constable when in the execution of his duty (c), such person shall be guilty of an offence against this Act, and shall in the discretion of the court, be liable either to pay a penalty not exceeding ninety-six dollars, and, in default of payment, to be imprisoned, with or without hard labor, for a term not exceeding six months, or to be imprisoned for any term not exceeding six months, or in case

(a) Consol. Stat. p. 231. In all sentences of imprisonment under summary convictions, such sentence of imprisonment may be with hard labour during the term of imprisonment, in the discretion of the convicting Justice.

(b) The term of imprisonment is now regulated by the amount of the penalty. [See Summary Jurisdiction Acts 1879.]

(c) It is sufficient in the case of all peace officers to prove that they acted in that character, without producing their appointment [*Berryman v. Wise*, 4 T. R. 366]; and in *Butler v. Ford* 1 C. & M. 622, the Court held that proof of acting was sufficient, although the constable was appointed under a local Act. In *R. v. Forbes and another*, 10 Cox C. C. 382, the defendant was convicted before the Recorder of London for assaulting two police officers who were in plain clothes, although the prisoners contended that they did not know that the men were constables. A person charged in the information with assaulting a constable in the execution of his duty, cannot be convicted of a common assault on the hearing of such information [*R. v. Brickhall*, 33 L. J. 156]; but a fresh information may be laid. On an indictment for assaulting a constable in the execution of his duty, it appeared that the assault was committed whilst the constable was attempting to arrest the accused on suspicion of having stolen trees under the value of one pound which the accused was carrying—to show that the constable was justified in suspecting and arresting the accused, the constable was allowed to be examined in chief as to the general character of the accused, but not as to the ground of his suspicion. [*R. v. Tuberville*, 11 L. T. 385.]

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Assault—Aggravated Assault on Women and Children.

such person has been convicted of a similar assault within two years, nine months, with or without hard labor. [34 & 35 Vict. c. 112, s. 12] (a).

AGGRAVATED ASSAULT ON WOMEN AND CHILDREN.—When any person shall be charged before two Justices of the Peace or a Stipendiary Magistrate with an assault or battery upon any male child, whose age shall not, in the opinion of such Justices, exceed fourteen years, or upon any female, either upon the complaint of the party aggrieved or otherwise, the said Justices, if the assault or battery is of such an aggravated nature (b) that it cannot in their opinion be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same in a summary way.—*Punishment*, on conviction, by imprisonment in gaol, with or without hard labor, for not exceeding six months, or a fine not exceeding (together with costs) ninety-six dollars, and in default of payment, imprisonment in gaol, for not exceeding six months (but not exceeding two months if the penalty does not exceed five pounds, see Summary Jurisdiction Act, 1879), unless such fine and costs be sooner paid; and if the Justices

(a) This section does not *create* the offence of assaulting a constable; but where any person is summarily convicted of an assault on a constable under any of the several statutes relating to borough, county, special, or other constables, then the penalty or imprisonment authorized by this section is substituted for the punishment imposed by any former statute. The right of appeal given by any statute does not appear to be affected. The punishment for the offence of "resisting a constable in the execution of his duty" is not altered by this section.

(b) A conviction may be sustained, although evidence may be given in support of a higher offence than that of assault, as rape, as the Justice may consider such evidence insufficient or untrue. If, however, a felony be proved, the offender should be committed for trial. [*Ex parte Thompson* 30 L. J. 19, and *Wilkinson v. Dutton*, 32 L. J. 152.]

Assault—Certificate of Dismissal.

shall so think fit, in any of the said cases, shall be bound (i.e., in a specific sum), to keep the peace and be of good behaviour for any period not exceeding six [a] months from the expiration of such sentence. [*Id.* s. 43.]

CERTIFICATE OF DISMISSAL.—17.—If the Justices upon the hearing of any such case of assault or battery *upon the merits*, where the complaint was preferred by or on behalf of the party aggrieved, under either of the last two preceding sections, shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate [b]

(a) If any offender who has been adjudged to pay a fine, and in default to be imprisoned, and to enter into a recognizance to keep the peace at the expiration of his sentence, should pay the penalty, after having been in prison for some time, the recognizance must be entered into immediately on the payment of the penalty, this being the expiration of his sentence; and the warrant of detention, consequent on his refusal to be so bound, should, it seems, be contained in the warrant of commitment for the assault. It is doubtful whether the convicted party can be ordered to find sureties for his good behaviour.

(b) The Justices cannot refuse to grant this certificate, but it is not necessary to draw it up unless applied for [*Handcock v. Simes*, 29 L. J., 196]; and the word "forthwith" means "forthwith upon application." [*Costar v. Hetherington*, 28 L. J. 198.] The certificate can be granted in those cases only where the complaint is dismissed upon the merits, i.e., after a hearing of the case; the decisions in *Tunnecliffe v. Tedd*, 12 J. P. 249, and *Bradshaw v. Vaughton*, 25 J. P. 102, will therefore cease to be of any authority under the present statute. [25 J. P. 658.] This certificate cannot be granted unless "the complaint is preferred by or on behalf of the party aggrieved." The certificate will be a bar to an indictment for unlawfully wounding [*R. v. Ellington*, 31 L. J. 14]; but not to an indictment for manslaughter. [*R. v. Morris*, 31 J. P. 516.] The certificate will not prevent Justices ordering the defendant to enter into a recognizance to keep the peace. [*Ex parte Davis*, 35 J. P. 551.] As to the assault charged in an indictment being the same as that referred to in the certificate, see *R. v. Westley*, 22 J. P. 487.

Assault—Form of Release.

under their hands, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred. [*Id.* s. 44.]

FORM OF RELEASE.—18.—If any person shall have obtained such certificate, or having been convicted, shall have paid the whole amount adjudged to be paid, or shall have suffered the imprisonment, or imprisonment with hard labor, awarded, in every such case he shall be released [a] from all further or other proceedings, civil or criminal, for the same cause. [*Id.* s. 45.]

OUSTER OF JURISDICTION.—19.—In case the Justices should find the assault or battery complained of to have been accompanied by any attempt to commit felony, or be of opinion that the same is, from any other circumstances, a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case, in all respects, in the same manner as if they had no authority finally to hear and determine the same: Provided also, that nothing herein contained shall authorize any Justice to hear and determine any case of assault or battery in which any question shall arise as to the title [b] to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any insolvency or any execution under the process of any court of justice. [*Id.* s. 46.]

a) But if there be neither a dismissal with a certificate thereof, nor a conviction, but merely an order for the defendant to enter into his recognizance to keep the peace and pay the costs thereof, no release can be pleaded. [*Hartley v. Hindmarsh*, 35 L. J. 254.] Conviction, with payment of the fine, is an answer to an action for injuries to business occasioned by the assault. [*Solomon v. Frinigan*, 30 J. P. 756.]

(b) There must be some colour of title, the bare assertion of right being insufficient to oust the jurisdiction of the Justices.

Assaulting Clergymen—Assaulting Magistrates, Etc.

ASSAULTING CLERGYMEN, ETC.—20.—Whosoever shall, by threats or force, obstruct or prevent, or endeavour to obstruct or prevent any clergyman or other minister in or from celebrating divine service, or otherwise officiating in any church, chapel, meeting-house, or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial-place, or shall strike or offer any violence to, or shall, upon any civil process, or under pretence of executing any civil process, arrest any clergyman or other minister who is engaged in, or to the knowledge of the offender is about to engage in, any of the rites or duties in the section aforesaid, or who to the knowledge of the offender shall be going to perform the same, or returning from the performance thereof, shall be guilty of a *misdemeanor*.—*Pun.* imprisonment not exceeding two years. [*Id.* s. 36.] Indict. offence.

ASSAULTING MAGISTRATE, ETC., ON ACCOUNT OF WRECK.—21.—Whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized, in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of a *misdemeanor*.—*Pun.* imprisonment not exceeding two years. [*Id.* s. 37.] Indict. offence.

(See cases under "Ouster of Jurisdiction," title "Practice," *post*, and pages 14 and 15 Manual.) Justices cannot convict where the assault has arisen from any of the causes mentioned in the proviso to the 46th section, although there may have been excess of force or violence. [*R. v. Pearson*, 34 J. P. 582.] If the summary jurisdiction is ousted, the Justices may commit for trial at the Supreme Court.

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Assault with Intent to Commit Felony, or on Peace Officers, etc.

ASSAULT WITH INTENT TO COMMIT FELONY, OR ON PEACE OFFICERS, ETC.—22.—Whosoever shall assault any person with intent to commit felony, or shall assault, resist, or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person, with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence, shall be guilty of a *misdemeanor*. *Punishment* under foregoing section not exceeding two year's imprisonment. Indict. offence.

23.—Whosoever shall be convicted upon an indictment for any assault occasioning actual bodily harm. *Punishment*, imprisonment not exceeding one year.

24.—Whosoever shall be convicted upon an indictment for a common assault. *Punishment*, imprisonment not exceeding one year.

The Courts of Quarter Sessions, in St. John's and Harbour Grace, have power to try in a summary manner without a Jury all cases of assault and battery, cutting and wounding, grievous bodily harm, and attempts to commit injury to the person, except attempts to commit murder and rape, and to punish the offender on conviction with six months imprisonment or \$100 fine, and to give compensation to the injured person. See *Summary Jurisdiction*.

BAIL.

BAIL is not taken in cases of murder unless by express order of the Attorney General. [1] In all cases of felony; [2] assaults with intent to commit any felony; [3] any attempt to commit a felony; [4] obtaining or attempting to obtain property by false pretences; [5] receiving stolen property; [6] perjury; [7] concealment of birth; [8] wilful or indecent exposure of the person; [9] riot; [10] assault in pursuance of a conspiracy to raise wages; [11] assault upon a peace officer in the execution of his duty or upon any person acting in his aid; [12] neglect or breach of duty as a peace officer the Magistrate has a discretion to take or refuse bail. In all other cases of indictable misdemeanors the prisoner has a right to be admitted to bail, and upon his tendering substantial sureties, bail must not be refused—whilst absolute discretion is given to the Magistrate in the first list of cases (11 & 12 Vict., c. 42, sec. 23),—he should not refuse bail if he is satisfied that there is no danger of the prisoner running away and substantial sureties are tendered. If, however, he has doubts upon the point, or he believes that the ends of justice will be defeated by allowing the prisoner to go at large, he should use his discretion about admitting the accused to bail. Bailing a prisoner is a judicial duty, and no personal considerations must influence the Magistrate in granting or refusing it.

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Bail--For Person Arrested without a Warrant.

Under section 38 of the Summary Jurisdiction Act, 1879--

A PERSON ARRESTED WITHOUT A WARRANT.--"A person taken into custody for an offence *without a warrant*, shall be brought before a Court of Summary Jurisdiction as soon as possible after he is taken into custody, and if it is not, or will not be practicable to bring him before a Court of Summary Jurisdiction within twenty-four hours after he is so taken into custody, a Superintendent or Inspector of Police, or other officer of police of equal or superior rank, or in charge of any police station, shall enquire into the case, and except where the offence appears to such Superintendent, Inspector, or officer, to be of a serious nature, shall discharge the prisoner upon his entering into recognizance with or without sureties for a reasonable amount, to appear before some Court of Summary Jurisdiction at the day, time, and place named in the recognizance."

Also, in cases "where a Court of Summary Jurisdiction *has fixed the amount of bail*," such recognizance may be entered into before the Clerk of the Court, or a Superintendent or Inspector of Police, or officer in charge of a police station, or before the Governor or Keeper of the prison. [Summary Jurisdiction Act, 1879, sec. 42.]

The object in arresting a prisoner on a criminal charge, is to bring him as soon as possible before a Magistrate. The only discretion allowed to the police is under sec. 38. This discretionary power should be used with great caution and, only in cases of urgency, or, when the Magistrate is absent. A police officer should consult with the Magistrate before exercising this discretionary power of taking bail. It is only when the prisoner cannot be brought before the Court within *twenty-four hours* that the discretion of taking bail is allowed to the police officer. Except as above mentioned, no police officer has any authority to release a prisoner when once taken into custody without permission from a Magistrate.

BASTARDY.

BASTARDY.—1.—The local law upon this subject is contained in the 108th and 112th chapters of the Consolidated Statutes, and is given in full in the following pages. As a considerable part of the duty of Magistrates in the outports consists in dealing with such cases, and as they are generally of a very disagreeable nature, and sometimes very perplexing, I have considered it advisable to enter very fully into this subject, and to state the law and the practice in reference thereto minutely.

2.—The object of the law is to prevent the colonial revenue from being burthened with the support of bastard children, when the father can be discovered.

3.—Bearing this in mind, the Magistrate must remember that it is the question of *paternity*, and not the question of morality, that he is trying. It is not an offence in *law* to be the father of an illegitimate child, but it is an offence under the 112th chapter of the Consolidated Statutes, to neglect or refuse to support such child.

4.—As the words of the chapter are, “any woman charging any person with having gotten her with child;” a widow, therefore, can make the complaint, and so also can a married woman, who at the time of making the complaint, is living apart from her husband. In the case of a married woman, it is essential that the non-access of the husband

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Bastardy.

should be proved; and it is a presumption of law that the child of a married woman is legitimate, but it may be rebutted by evidence disproving the paternity of the husband. That evidence, however, should be very clear and very conclusive. (a)

5.—In bastardy cases a very common defence is, that the woman making the complaint is a person of immoral character, if not a common prostitute. If the evidence shows that she is a common prostitute, that is, a woman openly lewd and profligate, having common sexual intercourse with men, the complaint should be summarily dismissed; and even if the case shows that she has had illegitimate children before by different fathers, or that she is immodest and loose in her conduct, the evidence should be received with great caution and sifted with the greatest care, and there should be clear evidence of paternity before the child is affiliated. Sometimes there are cases where the woman's conduct is not shown to have been previously bad, but there is satisfactory evidence that she has had sexual intercourse with one or more men, besides the party charged, about the time that she became pregnant. Such evidence would create a doubt as to the paternity of the child, and whenever the evidence raises an honest, substantial doubt in the mind of the Magistrate respecting the paternity, he should dismiss the complaint.

6.—The Magistrate may often, by his advice and influence, reconcile the parties, and sometimes where the woman is respectable and the paternity not disputed, or where the woman is seduced under a promise of marriage, he may induce the man to marry her; sometimes, also, he may induce the

(a) Non-access of the husband cannot be proved by the wife. [*R. v. Sourton*, 5 A. & E. 280.]

Bastardy.

parties to settle the matter out of court, and in all cases where he is satisfied that the child will be supported and well cared for, there can be no objection to his doing so; should there, however, be any doubt on his mind respecting the care and safety of the child, he should take security.

7.—The imprisonment of the party charged is only intended as a means to compel the putative father to support his child, and should only be resorted to as a last resource, when all other means of getting him to maintain his child have failed.

8.—Should there be twins, it is advisable to have a separate complaint and a separate affiliation order for each child, as, should one die, a distinct sum may appear on the face of the order, payable for the other; one complaint and order, however, would suffice.

9.—With regard to the time within which the child may be born, the ordinary rule is nine calendar months, in some cases a week earlier and in others a week later; sometimes, however, the period of gestation, in the opinion of many eminent medical men, may be protracted for two, three, or even four weeks, though rarely beyond eight or ten days; and it is also a well known fact that a child may be born alive with the power of being reared and of coming to manhood, at the end of about seven calendar months.

[*Consolidated Statutes, Chapter 112, "Of Illegitimate Children."*]

10.—Whenever a complaint, on oath, shall be made before any Justice, by any woman charging any person with having gotten her with child, which child is likely to be born

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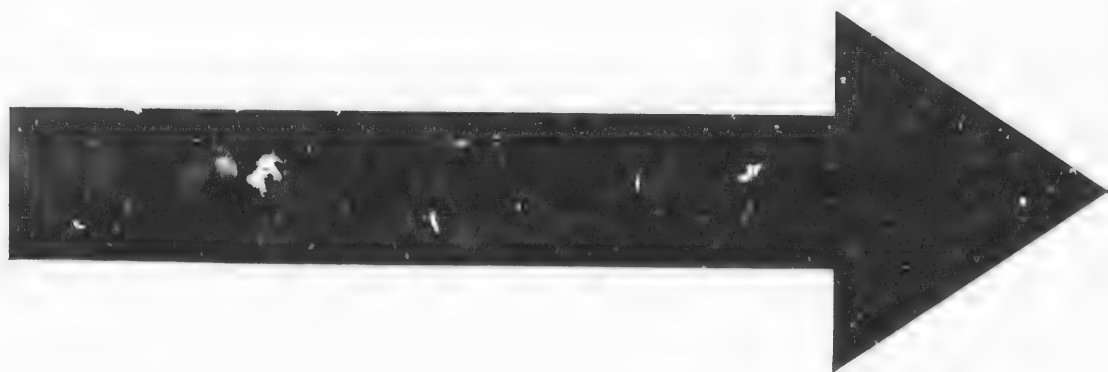
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a bastard, and become chargeable to the colony; and whenever a complaint, on oath, shall be made by any person charging any other person with being the father of an illegitimate child, chargeable, or likely to become chargeable to the colony; such Justice shall issue his warrant, and cause the party charged to be brought before him; and if, upon enquiry, such charge shall be sustained, and it shall not appear that the mother of the child was a common prostitute, such Justice shall make an order affiliating such child upon the party charged, and requiring security, by bond to the Stipendiary Commissioner of the Poor at St. John's, and his successors in office, to be given for the support and maintenance of such child until it shall have arrived at the age of ten years, or shall die, or be satisfactorily provided for; and in case such order shall not be forthwith obeyed, such Justice may sentence the party charged to imprisonment in the common gaol, with hard labor, for any period not exceeding six months: Provided that if, after committal, the party charged shall give such security, he shall be forthwith discharged; and where the Justice shall deem it reasonable, in the case of a child not already born, final order upon the charge may be postponed until after the birth of the child, the party charged giving security to abide any order to be made against him. [Sec. 1. Consol. Stat.]

11.—The provisions and proceedings mentioned and contained in the second and third section of chapter 108, Consol. Statutes, shall be applicable and may be put in force and carried out in all cases coming within the operation of the first section of this chapter (a). [Sec. 2.]

a) The meaning and effect of this Section, and also forms for carrying it out, are given under "Deserted Wives and Children;" the forms can easily be adapted to meet bastardy cases.



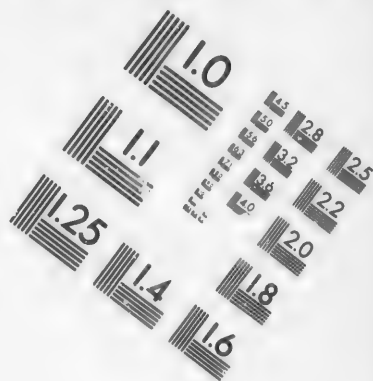
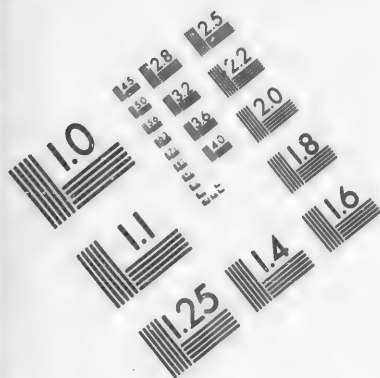
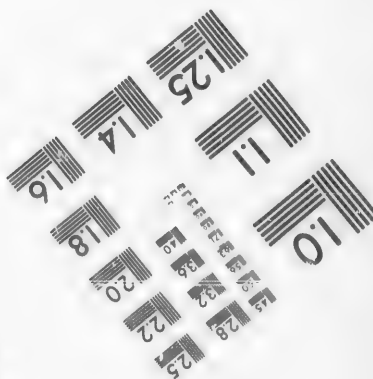
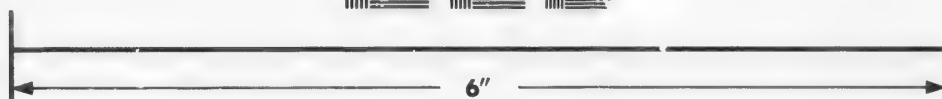
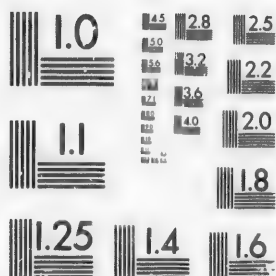


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Bastardy.

12.—Any person upon whom an order of affiliation shall have been made as aforesaid, may relieve himself from all obligation thereunder by the payment to such Justice, for the Receiver General of the colony, of the sum of one hundred dollars. [Sec. 3.]

13.—Every mother of an illegitimate child who, having the ability, to labor, or any means of supporting it, shall neglect or refuse to support and maintain such child, or shall abandon, desert, or leave it in any place, shall, upon conviction, in a summary manner, before any Justice, be subject and liable, and may be sentenced, to imprisonment, with or without hard labor, in the common gaol, for any period not exceeding six months; and such Justice may, upon complaint on oath being made before him of the commission, by any woman, of such offence, issue his warrant for her apprehension, in order to a conviction for the same. [Sec. 4.]

14.—The continued neglect or refusal to support and maintain such child by its mother, for any subsequent month after a first conviction for such offence, shall be held and deemed to be a new offence, and shall be dealt with and punished in the manner hereinbefore provided with respect to such first offence. [Sec. 5.]

15.—Any person charged by any woman or other person with being the father of an illegitimate child, and being convicted thereof by a Justice, may, upon giving security to abide the final determination of the case and to pay the costs thereof, if finally convicted, appeal from the order of affiliation to the Court of General Quarter Sessions for the District, before whom the matter in issue shall be determined by the jury in attendance for the trial of other matters: Provided

Bastardy—Forms.

also, that if, upon such trial, it be satisfactorily proven that the mother of the child was a common prostitute, and the jury shall find such fact, such finding shall be equivalent to a finding of not guilty on the main charge. [Sec. 6.]

16.—If any mother of an illegitimate child or any other person shall falsely and fraudulently charge any person with being the father of such child, such mother or other person, upon conviction of such offence in a summary manner before any Stipendiary Justice, shall be sentenced to imprisonment in the common gaol, with hard labor, for any period not exceeding six months (a). [Sec. 7.]

17.—The Stipendiary Commissioner of the Poor shall have the control and management of the illegitimate children supported by the colony, and apprentice them when of competent age, or otherwise provide for them. [Sec. 8.]

18.—The usual practice is for the woman who is with child to make the complaint, on oath, in the following form ; but any person aware of the facts can make the complaint for her :—

19.—FORM OF COMPLAINT IN BASTARDY.—

Northern District,
Island Cove,
to wit: }

NEWFOUNDLAND.

The complaint of Anna Higgs, of Island Cove, aforesaid, single woman, taken upon oath, who saith,—I am now with child by Job Giles, of Island Cove, fisherman, and the said child is likely to be born a bastard and become chargeable to the

(a) Cases under this Section will be prosecuted in the usual manner under Summary Jurisdiction, see "Summary Jurisdiction."

Bastardy—Forms.

colony; I therefore pray a warrant for the apprehension of the said Job Giles, (a)

her
ANN ~~X~~ HIGGS,
mark.

Sworn before me, at Island Cove,
aforesaid, this day of
A.D. 189 , having first been read }
over and explained.

T. WILLS, J.P.

20.—Should the child have been born, the form will be altered thus;—instead of the words “I am now with child,” it should be:—

“On the day of , 189 , I was delivered of a male (or female) bastard child. Job Giles of Island Cove, aforesaid, fisherman, is the father of the said child, which is likely to become chargeable to the colony; I therefore pray a warrant, &c.”

21.—When the complaint is sworn to, the Justice fills up his warrant, which is in the following form, and gives it to the constable to execute; it must in all cases be a warrant:

22.—FORM OF BASTARDY WARRANT.

Northern District, }
Island Cove, }
to wit: } To constables of the Northern District.

NEWFOUNDLAND.

Whereas Anna Higgs, of Island Cove, aforesaid, single woman, has this day complained on oath, before the undersigned, Justice of the Peace for the said District, that she is now with child by Job Giles, of Island Cove, fisherman, and that the said child is likely to be born a bastard and become chargeable to the colony. (Should the child be already born, follow form in sec. 20, down to the word “colony.”) These are, therefore, to

(a) It is advisable for the Magistrate to make a note of the time when the woman expects to be confined on the complaint, as time is a most important element in such enquiries when contested.

Bastardy—Forms.

command you, in Her Majesty's name, forthwith to apprehend the said Job Giles, and to bring him before me or some other of Her Majesty's Justices of the Peace in and for the said District, to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal, at Island Cove, aforesaid, this day of , in the year of our Lord one thousand eight hundred and ninety-

T. WILLS, J. P. [L. S.]

ARREST AND PROCEEDING THEREON.--23.--When the party charged is arrested and brought before the Magistrate on the warrant, the Magistrate should read over the complaint to him; (a) and if the child is not born, he should inform him that he may be released on giving security to answer the complaint when child is born, (*see Form of Bond to appear*) or he may, instead of giving a bond, deposit one hundred dollars with the Magistrate, or if he admits the charge, he may there and then relieve himself of all liability by payment to the Justice of \$100 (b) [*ante*, sec. 12.] Should the party charged be unable to obtain security, of course he must be detained in custody until the birth of the child, but in no case

(a) If it is possible for the Magistrate to obtain the attendance of the woman he should endeavour to do so when the party charged is brought before him on the warrant; the woman should be then sworn in his presence, and her statement with respect to her being with child by him, should then and there be taken down, written out, signed and sworn to, in presence of the party charged, and he should be asked if he wished to put any questions to her, and his questions and the answers written down as in a deposition on a charge; it is advisable to adopt this precaution as in the event of the woman dying before the hearing and her child surviving, the deposition thus taken would be evidence against the party charged.

(b) The Magistrate should not pay over this money until after the birth of the child; as, should the child die at birth, defendant is entitled to receive it back.

Bastardy—Forms.

beyond six months. This latter, however, is an extreme course, and should never be adopted unless there is actual danger that the party charged will run away.

24.—BOND IN BASTARDY CASES TO APPEAR.

Northern District,
Island Cove,
 to wit: }

NEWFOUNDLAND.

Be it remembered that on the day of in the year of our Lord one thousand eight hundred and ninety- , Job Giles, of Island Cove, aforesaid, fisherman, and , also of same place, fisherman, personally came before me, Thomas Wills, one of Her Majesty's Justices of the Peace for the District aforesaid, and acknowledged themselves to owe unto our Sovereign Lady the Queen the following sums, that is to say, Job Giles the sum of one hundred dollars, and the sum of one hundred dollars, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if the said Job Giles shall make default in the condition under written.

The condition of the above recognizance is such, that whereas Anna Higgs, of Island Cove, aforesaid, single woman, has declared upon oath before me, the said Justice, that (*she is now with child,*) that the said Job Giles, aforesaid, did get her with child, and, she fears that said child will be born a bastard and become chargeable to the colony. If therefore the said Job Giles do and shall appear before me the said Justice, or such other Justice of the Peace as may be present, when and where required in this District (*or at the Court House, in aforesaid,*) and abide by such order as shall be made in the premises, and to be farther dealt with according to law, then the said recognizance to be void; otherwise to remain in full force and virtue.

JOB GILES. ○

_____. ○

Acknowledged (the day and year }
 aforesaid) before me.

T. WILLS, J. P.

When the child is born, instead of the words in brackets, insert "she has recently been delivered of a child."

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Bastardy—Hearing.

HEARING.—25.—By the latter part of the first section of the Consolidated Statutes it will be seen, that in the case of "*a child not already born*, final order upon the charge may be postponed until after the birth of the child." It is not the practice in St. John's ever to determine such cases until after the birth of the child, and the reasons for such a practice are obvious (a); 1st, no claim can be made upon the putative father for the payment of money for the child until after its birth; 2nd, the child may be born dead, or may die immediately after birth, in both which cases the father would be discharged; 3rd, a full and fair enquiry cannot be had in such cases until after the birth of the child. When the child is born, as soon as the mother is able to attend before the Magistrate, she should, if she has not already done so, make a deposition in the form given in section 20; the Magistrate should then fix a time for the hearing (b) and issue his summons for any witnesses the woman or the party charged may require.

(a) Justice bearing in mind to take the Mother's deposition in presence of accused as before suggested at page 79, *note a*.

(b) Accused should be summoned to a given time and place by summons, as in Form given below.

Northern District, }
Island Cove, }
to wit:

NEWFOUNDLAND.

To Job Giles, Greeting;

You are hereby required to appear in your proper person before the undersigned, one of Her Majesty's Justices of the Peace for the said District, at Island Cove, in the District aforesaid, on the day of , by of the clock in the forenoon of the same day, to answer the complaint of Anna Higgs, who charges you with being the father of a bastard child, recently begotten of her, which child she fears will become chargeable on the colony.

Dated this day of , 189 .

T. WILLS, J. P. ○

Bastardy—Witnesses' Costs—Where Paternity Disputed.

WITNESSES' COSTS.—26.—There is no provision in the Consolidated Statutes respecting costs in Bastardy cases, nor for the payment of witnesses, but they are clearly entitled to be paid 75 cents a day for each day's attendance as a witness before the Magistrate, and 10 cents a mile from their residence to place of trial and back again; where the woman is a pauper and unable to pay for her witnesses, the Poor Commissioner appears to be the person who should pay them. The party charged, however, must pay his own witnesses, and they are not bound to attend without being paid.

27.—When both parties are present before the Magistrate the woman making the complaint and the man who is charged with being the father of the child, the Magistrate should first read over the woman's complaint to the party charged, and also her second complaint as to the time at which she was confined; he should then ask him if he denies the charge. If he then admits being the father of the child, all the Magistrate need do is to swear the woman in his presence, let her state briefly the facts that she was delivered of the child, (naming its sex,) at such a time, and the party charged is the father. The Magistrate then makes a note in his book of the admission of the charge, and then proceeds to make out the order of affiliation, as in the following form :—

PROCEEDINGS AT HEARING WHERE PATERNITY DISPUTED.

28.—When the paternity is disputed, after reading the complaints, and the party charged being asked as above, denies the charge, the Magistrate then administers the oath to the woman, thus,—

“The evidence you shall give in the present enquiry shall be the truth, the whole truth, and nothing but the truth. So help you God.”

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Bastardy--Where Paternity Disputed.

The mother of the illegitimate child gives her evidence first, she is then cross-examined by the party charged or his lawyer and her witnesses called and examined by her or by the Magistrate, and cross-examined by the party charged or his lawyer. It is usual to examine the midwife or a medical man, if he delivered her, as to the date of birth and sex of child. When the whole of the complainant's case is gone through, the party charged or his lawyer may ask the Magistrate to dismiss the case, and should the Magistrate (bearing in mind the advice given in section 5) feel that evidence is contradictory, and the question of paternity doubtful, he may dismiss the case without calling upon the defendant or his witnesses to give their evidence. If, however, the evidence satisfies his mind that a case has been made out against the party charged, (*that he is the father of the child,*) he will then ask the defendant if he wishes to be examined. He cannot be compelled to be examined. Before he gives his evidence, he, or his lawyer for him, can make a speech to the Magistrate, commenting on the complainant's case and also explaining what his own defence is, and the same course is then followed with him and his witnesses as with the complainant and her witnesses.

29.—The Magistrate should carefully note down all the evidence given in the case, both on direct and cross-examination. The Magistrate need not deliver his judgment at once, but he should decide as soon as possible, for the convenience of all parties; he may adjourn the hearing from time to time, and sometimes, when the case is hard fought, it will be necessary to do so in order to obtain the evidence of witnesses in corroboration of facts which are stated by one side or the other. No unnecessary delay, however, should take place in

Bastardy—Forms.

finishing the enquiry. When the Magistrate gives his judgment, either to affiliate the child upon the party charged or to dismiss the charge, he need not give his reasons for so doing. After judgment he makes out the following order:—

30.—AFFILIATION ORDER.—

Northern District, }
Island Cove, }
 to wit: }

NEWFOUNDLAND.

The order of Thomas Wills, Esquire, one of Her Majesty's Justices of the Peace for the said District, concerning a (male or female) bastard child, lately born of the body of Anna Higgs. Whereas it hath appeared unto me that on the day of she was delivered of the said bastard child, and that said child is likely to become chargeable to the colony, and that she charged Job Giles, of Island Cove, aforesaid, with being the father of said child. And whereas the said Job Giles hath been brought before me by warrant to answer the premises, but hath not shown sufficient cause why he shall not be deemed to be the father of the child. Wherefore, upon an investigation of the matter, as well upon the oath of the said Anna Higgs as otherwise, I hereby adjudge the said Job Giles to be the father of such child, and thereupon I order, as well for the relief of the colony as for the sustenance of such child, that the said Job Giles shall forthwith enter into a bond, with sureties, to the Stipendiary Commissioner of the Poor at St. John's and his successors in office, for the support and maintenance of such child until it shall have arrived at the age of ten years, or shall die or be satisfactorily provided for, or relieve himself from all obligation thereunder by the payment to me the said Justice, or some other Justice of the aforesaid District, for the Receiver General of the colony, of the sum of one hundred dollars.

Given under my hand and seal,
 this day of , A.D. one thou-
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T. WILLS, J.P. O

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Know all men by these presents, that we, Job Giles, of Island Cove, in the Northern District of Newfoundland, fisherman, and _____, of _____, also in the said District, aforesaid, fisherman, are held and firmly bound to the Stipendiary Commissioner of the Poor at St. John's, and his successors in office, in the sum of one hundred dollars each, to be paid to the said Stipendiary Commissioner of the Poor and his successors, for which payment to be made, we bind ourselves, and each of us, by himself, firmly, by these presents.

A. D. 189 , at Island Cove aforesaid.

The condition of the above recognizance is such, that whereas by an order of filiation made by me, the undersigned Justice, in the matter of a (male or female) bastard child, lately begotten on Anna Higgs, the said Job Giles hath been adjudged to be the father of such child, and to obey such order of filiation. If therefore he the said Job Giles do and shall support and maintain such child until it shall have arrived at the age of ten years, or shall die, or be satisfactorily provided for, or shall pay, or cause to be paid, to me the said Justice, or some other Justice for the District aforesaid, for the Receiver General of the colony, the sum of one hundred dollars, then this obligation shall become void.

his
JOB X GILES.
mark.

Signed, sealed and delivered, }
in presence of }
T. WILLS, J.P.

32.—FORM OF COMMITMENT IN BASTARDY CASES.—

Northern District, }
Island Cove, }
to wit: }

NEWFOUNDLAND.

To the Constables of the Northern District and to the Keeper of the Gaol at _____, in the said District.

Whereas complaint, on oath, was made before me by Anna Higgs, of Island Cove, single woman, that she was delivered of

Bastardy—Forms.

a male (or female) bastard child, that the child was likely to become chargeable to the colony, and that the said Job Giles was the father of the said child; and whereas the said Job Giles was brought before me on a warrant to answer the said complaint, and upon an enquiry into the said matter as well upon the oath of the said Anna Higgs as otherwise, in the presence of the said Job Giles, I adjudge the said Job Giles to be the father of the said child, and thereupon ordered him to enter into a bond to the Stipendiary Commissioner of the Poor at St. John's, to be given for the support and maintenance of such child, until it shall arrive at the age of ten years, or die, or be satisfactorily provided for; and whereas the said Job Giles has not complied with such order, and was thereupon sentenced by me, the said Justice, to imprisonment in the common gaol at , in the said District, with hard labor, for the period of months, or until he shall give the said security. These are therefore to command you the said constable, or any one of you, forthwith to convey the said Job Giles to the said gaol, and for you the said keeper to receive him into the said gaol and there imprison him and keep him at hard labor for the space of months, or until he shall give the said security.

Given under my hand and seal, at Island
 Cove, this day of , A.D. one thou-
 sand eight hundred and .

T. WILLS, J. P. O

APPEAL.—33.—It will be seen by section 15 of this chapter, (Consol. Stat., sec. 6,) that the party charged may appeal from the order of affiliation to the next Quarter Sessions for the District. Appeals under this section are not common; should the party charged appeal, he must give the convicting Justice notice of his intention to appeal, and also of the parties who he will give as security. The Magistrate need not accept the security unless he is satisfied with their solvency, and the surety should be a resident householder. He should put in the bond one hundred dollars, and also a sum sufficient to cover costs of appeal, expenses of witnesses,

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Bastardy--Forms.

ee.; in the Form I have put one hundred dollars. The Magistrate or Clerk of the Peace who prepares the bond for appeal is entitled to receive \$1.25 for it. The bond, when signed should be forwarded, as soon as possible, to the Clerk of the Peace or Stipendiary Magistrate resident at the locality where the Quarter Sessions is to be holden.

34.—BASTARDY BOND TO APPEAL—

Northern District,
Island Cove,
to wit:

NEWFOUNDLAND.

Be it remembered, that on the day of , in the year one thousand eight hundred and ninety- , Job Giles, of Island Cove, aforesaid, fisherman, and , also of Island Cove, , personally came before me, the undersigned, one of Her Majesty's Justices of the Peace for the said District, and acknowledged themselves to owe to our Lady the Queen the following sums: Job Giles, one hundred dollars, and one hundred dollars, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Queen if the said Job Giles fail in the condition endorsed.

The condition of this recognizance is such, that whereas by an order of affiliation made by me on the day of , one thousand eight hundred and ninety- , I adjudge the said Job Giles to be the father of a bastard child, by Anna Higgs, and whereas the said Job Giles hath given notice to me of his intention to appeal against the said order to the next General Quarter Sessions of the Peace, to be holden at , in the said District. Now the condition of this recognizance is such, that if the said Job Giles do appear at the said Court at its next sittings and duly prosecute his said appeal and abide by the judgment of the said Court and pay such costs as shall be by the said Court awarded, then this recognizance to be void. (a)

T. WILLS, J. P. C

(a) Should the Bond be forfeited by defendant's not appearing and prosecuting his appeal, the Justice's course is to act as in the case of forfeited Recognizances now under summary Jurisdiction Act, 1879.

The law seems to be that persons desirous of marrying within seven years after the commencement of the absence of the first husband or wife, cannot safely do so unless they are certain of the death of the other party. A *bona fide* belief in the death will be no defence unless the seven years have elapsed. [*R. v. Gibbons*, 12 *Cox*, 237.] A man marrying a woman whose former husband is alive, he, knowing such to be the case may be indicted for aiding and abetting in the commission of the offence. [*R. v. Smith, before Cockburn, C. J.*, 1871.] Prove first marriage, and that the first wife or husband was alive at the time of the second marriage. The marriage may be proved by the production of the Register or an examined copy or extract, provided it purports to be signed and certified as a true copy or extract by the Registrar or some person lawfully so entrusted. Prove second marriage by the same means. Competent witness to prove non-interference of the first husband or wife against the second.

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Birds--Birth.

marriage be proved, as second marriage is void. [*Archibold* 275.]

BIRDS.—Wild or migratory birds. See *Game Laws*.

BIRTH.—Concealing birth of a child. "Endeavouring to conceal the birth of a child, by secretly burying the dead body of the said child, or other secret disposal of the body."

M. Pun.—imp. not ex. 2 yrs. (I.A.) 24 & 25 Vic., c. 100, s. 60. Indict. **B.** discretionary.

This must be proved, and the mode of concealment, and also that the mother did it, if she is the one charged; the body of the child must be covered and concealed. Denial of the birth, no preparations having been made for confinement, and no assistance called for, generally form part of the evidence in such cases. Three points must be proved in such cases: 1st, That the woman was delivered of the child; 2nd, That she secretly buried, or otherwise secretly disposed of the body; 3rd, That the burying was an actual *concealment* of the body.

BIRTHS, MARRIAGES AND DEATHS---REGISTRATION OF.

The law on this important subject is contained in the following pages :—

1.—All births, marriages and deaths that take place within this Colony shall be registered in a public registry to be kept in the town of St. John's, and information as to such births, marriages and deaths shall be furnished and obtained as hereinafter provided, and such registry shall be kept in a place of safety, to be approved of by the Governor in Council.

2.—There shall be a chief officer appointed to carry out the provisions of this Act, to be called the Registrar General, who shall have charge of the public registry in St. John's.

3.—Notices of all births, marriages and deaths that take place in this Colony shall be given within such times as are hereinafter provided to one of the Registering Officers appointed under this Act.

4.—Every Clergyman and other person baptizing, or celebrating marriage, or performing funeral services in this Colony, shall keep a true and accurate register of all persons

Births, Marriages and Deaths.

when he has baptized, married or buried; such register of baptism to state the day of birth of the person baptized, and he shall transmit, quarterly, a correct copy of the same to the Registrar General.

5.—The Governor in Council may, by order, cause the limits to be defined of all or of some only of the Registrar's jurisdiction under this chapter, and as occasion may require alter the same; such order shall be published in the *Royal Gazette*.

6.—The registering officers under this Act shall forward, quarterly, to the Registrar General, a true copy of the registers kept by them of all births, marriages and deaths of which they have received notice as aforesaid, from the date when this Act shall come into operation, or from the date of their last report to the Registrar General, as the case may be; such report shall be accompanied with a remittance of one-half of all fines imposed under this Act collected by them, and such reports shall specify such other information respecting the births, marriages and deaths aforesaid, as is required by this Act.

7.—The Registrar General shall collect and keep a full and correct alphabetical registry of all births, marriages and deaths that take place within the Colony; shall file and keep copies of the registers received by him, and shall furnish to the Legislature an annual report of all matters and things relating to the affairs of his office, together with an account of the fees and fines collected under this Act.

B.R.T.H.S.I.—8.—When any birth takes place in this Colony information of the same shall be furnished within fourteen

Births, Marriages and Deaths.

days thereafter to the proper officer appointed under this Act to receive the same, under a fine not exceeding ten dollars for every neglect to do so. The obligation to furnish this information shall rest, in the first instance, upon the father of the child; or, in case of his death or absence, upon the mother; or, in case of the inability of both parents, then successively upon any person standing in their place, the nurse in attendance, or the occupier of the house within which the birth occurs.

9.—Either of the parents, or the guardian, or other person who may have procured the registry of the birth of a child, shall be entitled to receive from the registering officer a certificate of such registry upon payment of a fee of fifty cents.

ILLEGITIMATE CHILDREN.—10.—In the case of the birth of an illegitimate child, it shall not be lawful to register any person as the father of such child, unless at the joint request of the mother and of the person acknowledging himself to be the father, but such birth shall be registered in accordance with the provisions of Section 8, so far as the same shall apply.

MARRIAGES.—11.—When any marriage takes place in this Colony, information of the same shall be furnished within ten days thereafter to a registering officer under this Act, under a penalty not exceeding fifty dollars for every neglect to do so. The obligation to furnish this information shall rest jointly and severally upon the husband and wife.

DEATHS.—12.—When any death takes place in this Colony, information of the same shall be furnished or posted

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Births, Marriages and Deaths.

within ten days thereafter to the proper officer appointed under this Act to receive the same, in the form in Schedule A under a fine not exceeding ten dollars for every neglect to do so. The obligation to furnish this information shall rest, in the first instance, on the medical attendant, secondly, on the undertaker, and, failing these, on the next-of-kin to the deceased person.

13.—On receiving information of such death, the registering officer under this Act may fill up and cause to be signed by the medical attendant or undertaker, or, failing these, by some other credible person, who witnessed the death, or identified the body after death, a written statement setting forth the date and place of death, the name, age, and sex of the deceased, and the cause of death, as nearly as can be ascertained, and shall, if requested, issue to the person entitled to receive the same a certificate setting forth the facts thus subscribed to, as furnished to him, for which certificate a fee of fifty cents shall be charged.

14.—Officials in charge of Hospitals, Poor Asylums, Orphanages, Gaols, and other such Public Institutions shall send notice of any birth, marriage or death that occurs within the institutions under their charge within ten days thereafter, and in default of doing so, such official shall be liable to a penalty of fifty dollars in each case.

15.—The Registrar General or other registering officer shall use every available means to obtain a full and accurate account of all births, marriages and deaths that take place in the colony, and shall furnish a notice in the form of Schedule B in all cases where he has reason to believe that the necessary information has not been supplied to him.

Births, Marriages and Deaths.

16.—All persons named in the fifth Section of this Act, who shall forward to the Registrar General extracts from the the registers kept by them of births, marriages and deaths occurring in their locality, shall be entitled to be paid for such notice at the rate of ten dollars per hundred events registered.

17.—Every person who shall make, or cause to be made, for the purpose of being inserted in any register of births, marriages and deaths any false statement touching any of the particulars herein required to be known and registered, or who shall alter or deface any return or register, shall be subject to the same pains and penalties as if such person were guilty of wilful and corrupt perjury.

18.—Every person who shall send to any newspaper, publisher or other person for publication in any newspaper in this colony, a fictitious or false statement of the marriage or death of any person, or of the birth of any child, shall be guilty of a *misdemeanor*, and shall be liable to fine or imprisonment, or both, at the discretion of the Supreme Court of this colony.

19.—Every proprietor, editor or publisher of any newspaper published in this Colony, who shall knowingly and wilfully publish a fictitious or false statement of the marriage or death of any person, or of the birth of any child, shall be guilty of a *misdemeanor*, and shall be liable to fine or imprisonment, or both, at the discretion of the Supreme Court of this colony.

20.—All fines imposed under this Act, unless herein otherwise provided, shall be recovered in a summary manner before any Stipendiary Magistrate in the name of the Registrar General; one-half of such fine shall be retained by the

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Births, Marriages and Deaths.

Registry officer prosecuting, and the remainder shall be paid to the Registrar General, and shall be paid over by him to the Receiver General for the use of the colony.

21.—Reference may be had to the registers by any person, during office hours, by paying a fee of ten cents, under such regulations as the Registrar General shall appoint; and a certified extract from any registry may be obtained from him on application, by paying a fee of fifty cents in each case: Provided that all clergymen, doctors, solicitors, members of the Legislature and public officers, shall have free access to the registers during office hours free of charge.

22.—Certificates of births, marriages and deaths shall be exact copies of the registers, and shall be signed and certified by the registering officers.

23.—This Act shall come into force at such date as shall be appointed by the Governor by his Proclamation.

24.—This Act may be cited as "The Registration Act, 1890."

25.—All clergymen and other persons legally licensed to baptize, celebrate marriage, or perform funeral service, in this colony (and having charge of any mission, parish or congregation) shall be "Registering officers," and the limits of their duties under this Act shall be the same as those assigned them by ecclesiastical authority.

26.—No sexton or other person having charge of cemetery or burial place, shall permit the burial of any person in such cemetery or burial place, without first having received a certificate signed by a medical attendant, a clergyman, or two

Births, Marriages and Deaths—Forms.

reliable persons cognizant of the facts, certifying to the death of the person for whom burial is required, and setting forth, so far as is known, the cause of death; and all such certificates shall be forwarded monthly to the "Registering officers" concerned.

SCHEDULE A.

No. COLONY OF NEWFOUNDLAND.

ELECTORAL DISTRICT OF

(a) 18 .

Notice is hereby given that the death took place at (b), on the (c) day of , 18 , of (d) aged years, [married or single] as far as could be ascertained.

(e) (f)

Witness.—

- (a) Name of place, day of month and year.
- (b) Name of place where death occurred.
- (c) Day of month and year when death occurred.
- (d) Name in full of deceased person.
- (e) Name of person giving this notice.
- (f) Address of person giving this notice.

SCHEDULE B.

No. COLONY OF NEWFOUNDLAND.

ELECTORAL DISTRICT OF

(a) 18 .

[SIR] OR [MADAM],—

Hearing that a birth [marriage or death] has recently occurred in your [house] or [family], it is my duty to call your attention to the provisions of the "Registration Act of 1890." An extract is hereto appended, in order that you may be prepared

Births, Marriages and Deaths—Forms., etc.

to conform to the requirements of the Act, and avoid the penalties for any breach of the same.

To _____, (b)

Registering Officer for District.

-
- (a) Name of place, day of month and year.
(b) Name and address of person to whom notice is sent.

BISCUITS.—See Weights and Measures.

BOARDS OF HEALTH.—See Public Health.

BONDS.—See Sureties and Recognizances.

BOOKS AND NEWSPAPERS---PUBLICATION OF.

The law on this subject is contained in the following pages:—

“Any person who shall print any book or paper which shall be intended to be published or dispersed, whether the same shall be sold or given away, shall print upon the front of every such paper, if the same shall be printed on one side only, and upon the first and last leaves of every book or paper which shall consist of more than one leaf, in legible characters, his name, and the name of the city, town or place, and also the name (if any) of the square, street, lane, court or place in which his dwelling house or usual place of abode shall be; and every person who shall omit so to print his name and place of abode on every such paper or book printed by him, and also every person who shall publish or disperse, or assist in publishing or dispersing, either gratis or for money, any printed paper or book, and on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall, for the publication or dispersion by him of every copy of such paper or book so published or dispersed, forfeit and pay to our Lady the Queen the sum of one hundred dollars. Nothing herein contained shall extend to any papers printed by the authority and for the use of the Government or either branch of the Legislature of this island, nor to any paper printed and published by any clergyman, and containing religious instruction only.”

It will be seen by this provision of the law that all posters, anonymous pamphlets, fly-sheets, etc., without the

Books and Newspapers—Publication of.

printer's name thereon, are illegal, and subject the offender to a fine of \$100, recoverable in the Supreme Court by action or information in the name of the Attorney General, &c.

PUBLICATION OF NEWSPAPERS.—In the following pages I have given an abstract of the law on this subject:—

1.—No person shall print or publish or cause to be printed or published any newspaper or other paper containing public news or intelligence, or serving the purpose of a newspaper, until an affidavit as herein mentioned shall be delivered to the Colonial Secretary, or to some officer in the respective towns and at the respective offices which shall be appointed by the said Secretary for the purpose of receiving such affidavits, containing the several matters and things hereinafter for that purpose specified.

2.—Such affidavit shall set forth the real names, additions, descriptions and places of abode of every person who is intended to be the printer and publisher of the newspaper or other paper mentioned in such affidavit and all of the proprietors of the same, and all the proprietors of the printing press and types generally used in the printing thereof, and a description of the building wherein any such paper is intended to be printed, and the title of such paper.

3.—An affidavit of the like import shall be given in like manner as often as any of the printers, publishers or proprietors named in such affidavits shall be changed, or shall change their respective places of abode, or their printing house, place or office, and as often as the title of the paper shall be changed.

4.—Every such affidavit shall be made by the printer or publisher or one of the proprietors of such newspaper or

Books and Newspapers—Publication of.

other paper, and shall be in writing, and signed by the person making the same, and shall be taken before a stipendiary Justice of the Peace.

5.—Persons making false affidavits will be liable to punishment for wilful and corrupt perjury.

6.—Affidavit to be filed in Colonial Secretary's office, and the certified copies to be received in evidence as to the proprietor, printer and publisher.

7.—Newspaper to set forth in some conspicuous part, true and real name, and residence of printer and publisher, and office of publication.

10.—Copies of newspapers to be lodged with Colonial Secretary six days after publication, signed by the printer and paid for. Fine of \$200 for neglect to do so.

FORM OF AFFIDAVIT.

Central District, }
St. John's, }
to wit: }

NEWFOUNDLAND.

John Snooks, of St. John's, printer, maketh oath and saith as follows: I am the printer and publisher of a daily newspaper to be called *The Daily Tomahawk*. *John Jones*, of farmer, and *John Smith*, of merchant, are the proprietors of said paper, and also the proprietors of the printing press and types generally to be used in the printing thereof. The said paper will be printed and published at No. , Duckworth Street, St. John's.

JOHN SNOOKS.

Sworn before me at St. John's, }
this day of , A.D. 1893. }

J. G. CONROY, Stip. Mag.

Books—Breach of the Peace—Bread—Bridges, etc.

BOOKS.—See copyright on books.

BREACH OF THE PEACE.—A breach of the peace is any violation of that quiet, peace and security, which is guaranteed by our laws for the personal comfort of every one. Any one may act as a Peace Officer, and prevent a breach of the peace. All subjects are bound to assist in maintaining the public peace. It is the duty of every police officer to arrest any one committing a breach of the peace in his presence, but he will use due discretion in carrying out the law.

BREAD.—Loaves of bread intended for sale shall be made of the following weights, namely: four pounds, two pounds, one pound, and eight ounces, and shall have stamped or marked thereon the initials of the maker and the weight of the loaf; and the vendor of bread shall keep a scale and weights, and shall if required, weigh the bread for the satisfaction of the purchaser; and bread offered for sale of short weight shall be forfeited and may be seized by the purchaser or intending purchaser, or any peace officer, and delivered to any Justice, who shall dispose of the same for the benefit of the poor. Provided that this section shall not apply to loaves made to order and rasped by the desire of the customer, nor to loaves or cakes weighing less than eight ounces. Prosecutions for breach of this section shall be commenced within three days after the offence shall have been committed. Penalty not exceeding \$20, or in default of payment, imprisonment not exceeding 14 days.

BISCUIT—commonly called bread in this colony—standard weight of bag, 112 lbs.; half bag, 56 lbs.

BRIDGES.—See Roads and Bridges.

*Building--Buildings used for Prostitution, Gaming, etc.***BUILDING.**—Burnt, dilapidated, or dangerous building.

A Stipendiary Magistrate may, after due notice in writing to the proprietor of any burnt, dilapidated or dangerous building, or his agent, and a hearing of the matter, adjudge the same to be a nuisance in the neighbourhood, or dangerous, and shall make an order prescribing such disposition, alteration or regulation thereof as the said Magistrate may deem necessary; and if the said proprietor shall fail to comply with such order, he shall be liable to a penalty not exceeding fifty dollars; or the Magistrate may, in his discretion, cause the said nuisance to be removed or destroyed, and may recover the expense of so doing in a summary manner in the name of the Clerk of the Peace or a constable from the person so offending.

BUILDINGS USED FOR PROSTITUTION, GAMING, ETC.— All buildings, places, or tenements resorted to for prostitution, lewdness or illegal gaming, shall be deemed common nuisance.

Whoever keeps or maintains such common nuisances shall be liable to a penalty not exceeding one hundred dollars, or to be imprisoned in the nearest goal for a period not exceeding three months.

If a tenant or occupant under lawful title of any building or tenement uses such premises, or any part thereof for any of the purposes enumerated in the above paragraph, such use shall annul or make void the lease or other title under which he holds, and, without any act of the proprietor, shall cause the right of possession to revert to and vest in such proprietor, who may, without process of law, make immediate entry upon the premises, or he may avail himself of the

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Building—Burglary.

remedy provided by law for the more speedy recovery of tenements.

Whoever knowingly lets a building or tenement, owned by him or under his control, to be used for any purpose mentioned above, or after due notice of any such use omits to take all reasonable measures to eject therefrom the persons occupying the same as soon as it can be lawfully done, shall be deemed guilty of aiding in the maintenance of such nuisance, and punished by fine not exceeding one hundred dollars, or imprisonment in the nearest goal for a period not exceeding three months.

BUILDING.—Rebuilding the Town of St. John's, Harbor Grace and Carbonear; the provisions of these complicated enactments are too long for insertion here.

BURGLARY.—"Whosoever shall be convicted of the crime of burglary, *i.e.*, the breaking and entering the dwelling house of another in the night—with intent to commit felony therein—or being therein shall commit a felony, and shall in either case break out of the said dwelling house in the night. Entering with intent to commit a felony. *Felony*—Imprisonment not exceeding two years."

DWELLING HOUSE.—Must prove that the defendant broke and entered the dwelling house in which C. D. resided, or some building between which and the dwelling house there was a communication.

BREAKING.—There must be a breaking, actual or constructive; but lifting a latch, breaking out a pane of glass, pushing open a window, fastened with wedges, has been held a breaking. Entering through an open window—is not breaking—breaking out, however, through an inner door—is sufficient breaking.

Burthen of Proof—Burial,—Carrots—Carts, etc.

ENTRY.—Any, the least degree of entry, however, with any part of the body, or with an instrument held in the hand, is sufficient.

INTENT.—The best evidence of intent is, that the defendant actually committed the felony alleged to have been intended by him.

NIGHT.—By law, now, night commences at 9 p.m., and ends at 6 a.m., of the next morning. To constitute burglary, crime must be committed within those hours.

BURTHEN OF PROOF.—The burthen of proof lies on the prosecutor, and the guilt of the accused in all cases must be proved by evidence.

BURIAL.—New burial grounds not allowed within the limits of the town of St. John's. The various burial grounds existing within these limits, to be fenced and planted by the religious bodies to whom they belong, but no bodies to be interred within the said city limits, in the said burial grounds, or elsewhere within the said boundaries. Governor in Council may by proclamation at request of minister, etc., for sanitary or other reasons, order certain burial grounds to be closed. Penalty for interring in prohibited burial grounds not exceeding \$100, in default of payment, imprisonment not exceeding three months.

CARROTS.—Standard weight of bushel of carrots, 60 lbs.

CARTS, CARRIAGES, WAGGONS, CATAMARANS.—All carts and waggons employed or used upon any of the public roads or streets of this Island shall have the owner's name painted in full length on some conspicuous part thereof, in letters of not less size than two inches, and painted in white on a black ground, or black on a white ground, under a penalty not exceeding ten dollars.

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Carriages—Cattle, Disease of, Landing, etc.

CARRIAGES, Etc.,—RULE OF THE ROAD.—All carriages, carts, waggons, catamarans, sleighs, and other vehicles shall, by the person in charge of the same, on meeting any other carriage, cart, waggon, catamaran, sleigh, or other vehicle, be conducted and kept on the left side of the road, so far as the state of the highways or roads will permit, and each person conducting such vehicle shall give one-half of the said road to the other, under a penalty not exceeding ten dollars.

CATTLE DISEASE—THE PREVENTION OF.—1.—The Governor in Council may make rules and regulations for preventing the introduction or spreading of any contagious or infectious disease among horses, cattle, pigs and sheep in this colony, such rules to be promulgated and published in the *Royal Gazette*.

2.—The Governor in Council may issue orders to the Receiver General, or other proper officer of Her Majesty's Customs, to prevent the landing, in any port or place in this colony, of horses, cattle, pigs, or sheep, having any contagious or infectious disease, and to order the immediate removal and, if necessary, the destruction of the same.

3.—Fine not exceeding \$100, in default of payment, imprisonment not exceeding 3 months, recoverable before a Stipendiary Magistrate.

CATTLE—LANDING OF.—4.—The Receiver General, Assistant or Sub-Collector or other proper officer, at the port where any vessel, having on board any cattle, may arrive, shall, upon application of the importer thereof, permit the immediate landing of the same: Provided that, at the time of entry of

Cattle—Census—Central District Court.

such vessel due entry of and payment of the duties imposed by law on such cattle shall be paid.

CATTLE—SLAUGHTERING.—5.—No person shall kill, slaughter, scald or dress any animal for meat in any street, square, lane, or passage, in any city, town or settlement in this colony, or in any building within the same, except with the permission of a Stipendiary Magistrate, under a penalty not exceeding twenty dollars.

CATTLE.—Leaving dying or dead cattle in any cove, street, highway, etc., penalty not exceeding \$25.

CENSUS to be taken at least every tenth year. Power to the Governor in Council to sub-divide districts and appoint persons to take the census.

CENTRAL DISTRICT COURT.—See Administration of Justice.

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CERTIORARI.

CERTIORARI DEFINED.—1.—*Certiorari* is defined to be an original Writ, directed in the Queen's name to the Judge or Justices, at or out of Sessions, commanding them to *certify* or return the records or proceedings in a *judicial* matter pending before them, to the end that such further may be done thereon as of right, and according to the law and custom of Newfoundland, may seem fit to be done. No Writ of Error lies on summary convictions, and therefore the Writ of *Certiorari* is the only mode by which a revision of these proceeding, by the Supreme Court, can be obtained.

2.—No special law is required to authorize this Writ; it is a consequence of all inferior jurisdiction of record to have their proceedings removeable for the purpose of being examined in the Supreme Court by *Certiorari*.

3.—*Certiorari* differs from *appeal* in this respect: appeal must be created by express law; *Certiorari* lies, as a matter of course, to all inferior Tribunals, unless taken away by express statutable provision.

4.—Even express words taking away the *Certiorari* does not take away the Attorney General's right to a *Certiorari* in all cases; and express words also have no application where there is a want or excess of jurisdiction, or where

Certiorari Defined.

the Court is illegally constituted, or where the conviction is obtained by fraud. (a)

5.—Whilst an appeal is depending at the Quarter Sessions, there can be no *Certiorari*, nor where a certain time is fixed for bringing an appeal, and both parties have that privilege, the *Certiorari* is suspended during the time given for the appeal.

6.—The proper purpose of *Certiorari*, so far as concerns Justices of the Peace, is that of getting a conviction or order of Justices removed into the Supreme Court, to the end that it may be quashed, from some defect apparent upon its face.

7.—It cannot be quashed or set aside from want of form only, (b) it must be for some essential defect; it must be wanting in some essential ingredient, or what Lawyers call "*matters of substance.*" Justices, however, should be particular in following the forms in the precise words; it is the only safe course for them to pursue.

8.—When it appears upon the face of the conviction that the Justices had in fact *jurisdiction*, the Supreme Court cannot inquire into the question whether or not the Justices came to a *sound conclusion*; the Supreme Court in those cases is not a Court of *Appeal*, but merely a Tribunal to keep inferior Courts within the limits of their proper functions. (c)

(a) Paley, on Convictions, under Title *Certiorari*.

(b) Consol. Stat. p. 43.

(c) Oke, p. 51.

Oke, p. 53, where fuller information is given; and see Paley, under head *Certiorari*.

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Certiorari Defined.

9.—If the conviction is good upon its face, no evidence can be received by the Supreme Court to contradict the statements contained in such conviction; the only evidence that can be received by affidavit or otherwise, is to show that the Justices had *not jurisdiction*.

10.—The *Certiorari* must be sued out within six months. Six days' notice must be given to the Justice, and security must also be given.

11.—When the Writ of *Certiorari* is sent to the Justice, he must append to it the conviction or order mentioned in the Writ, with the Information or Complaint, and make a return in the form given in the Appendix under the head of *Certiorari*.

12.—Where, in Acts of Parliament, the words only are used "*nor be removed by Certiorari*," (as in 24 & 25 Vic., C. 100. Offences against the person); this does not prevent a case being brought before the Supreme Court, under 20 & 21 Victoria, C. 43. (The Imperial Act which provides for stating a case for the opinion of Superior Court.) It would have been different if the words had been, *nor be removed by Certiorari or otherwise*. (a)

CERTIORARI—FORM OF WRIT OF.—(a)

Newfoundland. }
Supreme Court. }

VICTORIA, by the Grace of God, of Great
Britain and Ireland, Queen, &c.

To , one of our Justices of the Peace for the District of
our said Island, Greeting:—

(a) Greaves' Crim. Law Consolidation p. 92.

Cheating—Cheating at Play.

We, being willing for certain causes that all and singular the records of conviction whereof C. D. was convicted before you of (*here state offence*) as it is said, be sent by you before us; We do, therefore, command you that you send the records of the said conviction, with all things touching the same, under your seal, immediately after receipt of this writ, before us, in our said Court, together with this our writ, that we may further cause to be done therein that what of right and according to law we shall see fit to be done.

Witness Sir F. B. T. Carter, K. C. M. G., Chief Justice of our said Supreme Court, at St. John's, this day of , 189 .

By the Court,

A. J. W. McNEILY, C. C. & Reg.

JUSTICE'S RETURN TO WRIT OF CERTIORARI.—(To be endorsed on Writ.)

—— District, }
—— to wit: }

NEWFOUNDLAND.

I , Esquire, the within named Justice of the Peace, do, under my hand and seal, return into Her Majesty's Supreme Court of Newfoundland, the conviction mentioned within, with all matters touching the same. Witness my hand seal, &c.

—— J. P. ☉

CHEATING is an offence indictable as a misdemeanour under the common law when the method of cheating or deceiving is such as people by ordinary care cannot guard against as when false weights are used; but it is different when the cheat or deception is one against which ordinary prudence would protect one.

CHEATING AT PLAY.—Any person who shall by fraud or unlawful device, or ill practice in playing at or with cards, dice, tables, or other games, or in bearing a part in the stakes, wager or adventure, or in betting on the hands or sides of

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Children--Chimney.

them that do play, or in wagering on the event in any game, sport, pastime, or exercise, win from any other person to himself or any other one or others, any sum of money or valuable thing shall be deemed guilty of obtaining money, &c., by false pretences, with intent to cheat or defraud such person of the same. [8 & 9 Vic., C. 109, Sec. 17.]

CHILDREN under seven cannot be guilty of felony.

If between seven and fourteen, and it appears to the Court and Jury that a child could discern between good and evil he may be convicted. See also selling liquor to children. [Children punishable under Summary Jurisdiction. See Summary Jurisdiction Act 1879, &c.]

CHILDREN deserted by their parents. [See under the head *Deserted Wives and Children*.]

CHIMNEY.—On information being given to any Justice of the Peace of any building wherein there is any dangerous chimney, stove pipe or funnel, the said Justice of the Peace shall direct a constable to proceed to the said building and examine the same; and if he shall report to the said Justice that any repairs, alteration or removal be necessary, the said Justice shall give an order for such repairs, alteration or removal, to be made; and if such order shall not be complied with, such Justice shall cause such removal or alteration to be made, at the expense of the occupant or owner of the building. And if any person shall refuse admittance to such constable while acting under this section, or shall not make the removal or alteration so ordered, he shall for each offence forfeit and pay a penalty not exceeding twenty-five dollars, to be recovered, together with the expenses of removal or alteration, in the name of such constable, and in default of payment

Clergyman—Clerk of the Peace—Coals—Coasting, etc.

the offender may be imprisoned for a period not exceeding ten days.

CLERGYMAN or Priest not compellable to give evidence of any confession made to him in his professional character.

CLERK OF THE PEACE is Clerk of the Central District Court in St. John's, and of the Harbor Grace District Court. Magistrate may act as Clerk of the Peace. As to fees, &c., see *Administration of Justice*.

COALS must be sold by weight. Ton 2240 lbs. may be sold by measure at option of purchaser in measures containing 224 lbs. and 560 lbs. Avoirdupois of dry coal, struck or water measure, penalty not exceeding \$10, does not apply to sale of cargo wholesale or by chaldron.

COASTING.—Quarter Sessions may make regulations for preventing coasting or sliding, or skating in streets, etc., throwing stones, playing games in highways or other places calculated to inconvenience or annoy, penalty not exceeding \$5, parents liable. Master may deduct fine from apprentices' wages.

COAST FISHERY.—See *Fishery*.

CODFISH.—Stealing codfish, green or cured, to a value not exceeding \$20, may be tried summarily before a Stipendiary Magistrate. *Punishment* imprisonment not exceeding six weeks. Appeal to Supreme Court on giving sufficient security. (Offender may be tried in St. John and Harbor Grace for stealing fish, etc., to any amount if he consents.

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CODFISH---CULLING OF.

CODFISH—CULLING OF.—1.—No person shall cull codfish as between vendor and vendee in place or places under the operation of this Act, unless such person shall have been previously sworn before a Stipendiary Magistrate or Justice of the Peace, faithfully and without fear, favour or affection, to discharge the duties of a Fish Culler.

2.—The oath to be taken by such Culler shall be in the form of Schedule A to this Act.

3.—No person shall cull codfish, as between vendor and vendee, in the towns of St. John's, Harbor Grace, Carbonear, Trinity, Catalina, King's Cove, Greenspond, Bonavista, Twillingate, Fogo, Burgeo, Harbor Briton, Gaultois, and such other ports or places as the Governor in Council may, by Proclamation, direct, without first having obtained a Culler's license from a Stipendiary Magistrate or Justice of the Peace.

4.—No person shall be licensed as a Culler to cull codfish, as between vendor and vendee, in any of the places that may come under the operation of this Act, unless upon the recommendation of three persons of known experience as Cullers, which recommendation shall state that the applicant for such license is competent to perform the duties of a Culler of codfish, and is a fit and proper person to be granted a Culler's license under this Act.

Codfish—Culling of.

5.—The license to be granted as aforesaid, shall be in the form of Schedule B to this Act: Provided that such license shall continue in force for a period of five years, and may be renewed at the expiration of that time for a like period, and so on from time to time for the number of years aforesaid. The fees for such license shall be one dollar for the first license and fifty cents for each renewal of license; the said fees shall be paid to the Receiver General for the use of the Colony.

6.—Any person who shall cull codfish, as between vendor and vendee, in any of the aforesaid towns, or in any other places under the operation of this Act, without being the holder of a license, shall be liable to a fine not exceeding ten dollars, or in default of payment thereof to imprisonment for a period of not exceeding ten days for said offence.

7.—Any person who shall accept from any vendor or vendee, by whom he shall be employed, or from any person on behalf of such vendor or vendee, any payment, reward, or gift of any kind whatsoever, for his services as a Culler of codfish other than the market rate for culling codfish, shall be subject to a penalty of not exceeding fifty dollars, or in default of payment thereof, imprisonment for a period of not exceeding two months for any such offence as aforesaid contained in this Section, and also shall, on conviction thereof, forfeit his license as a Culler of codfish.

8.— Any person who goes from Saint John's, Harbor Grace, Carbonear, Twillingate, Fogo, Greenspond, Bonavista, King's Cove, Catalina, Trinity, Harbor Briton, Burgeo, Gaultois, to any port in this Colony and its dependencies, in the capacity of a culler for the purpose of culling fish for export,

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Codfish—Culling of.

shall be sworn and licensed, and shall otherwise be subject to the provisions of this Act.

9.—In case of any dispute arising between a vendor and vendee as to the culling of any codfish by any licensed culler engaged in culling the fish of such vendor, such dispute shall be forthwith referred to the immediate determination of two sworn cullers, one to be appointed by the vendor or his agent, and one by the vendee or his agent, and the decision of such sworn cullers shall be final and binding between the parties; and in case the said two arbitrators cannot agree, they shall call in the assistance of a third competent person, and the decision of any two such arbitrators shall be final and binding between the parties. The fee for such arbitrament shall be one dollar to each culler and five dollars for umpire, one-half to be paid by each party.

10.—Every Stipendiary Magistrate or Justice of the Peace granting such licenses as aforesaid, shall, in each year, make out, sign, and transmit to the Colonial Secretary a statement showing the person or persons to whom such license or licenses has or have been granted, and the date of such license or licenses.

11.—Stipendiary Magistrates or Justices of the Peace are hereby empowered to administer the oath, provided in Schedule A to this Act, to applicants applying for a culler's license, in accordance with the provisions hereof.

12.—All penalties under this Act shall be recovered upon complaint and summary conviction before a Stipendiary Magistrate, by any one who shall make such complaint and prosecute the offender to conviction.

Codfish—Culling of—Forms.

13.—This Act may be cited as the "Culler's Act of 1887."

SCHEDULE A.

CULLER'S OATH.

I, A.B., do solemnly swear that I will honestly, faithfully, and impartially, and to the best of my ability, cull all fish entrusted to me for culling without fear, favour, or affection of or to any vendor or vendee of such fish.

(Place,)

(Date,)

A. B.

Sworn before me, at
this day of , 188 . }

C. D.

J. P., (or as the case may be.)

N.B.—This oath must be signed and endorsed on the culler's license.

SCHEDULE B.

CULLER'S LICENSE.

This is to certify that B. B., of , has been sworn before me, according to the provision of the "Culler's Act of 1887," and that he is hereby licensed according to the provisions of the said Act for that purpose.

(Place,)

(Date,)

C. D.

J. P., (or as the case may be.)

Coins—Confession—Constabulary.

COINS.—See currency.

CONFESSION is perfectly good evidence against the person making it, if given voluntarily.

“Confession of guilt, freely and voluntarily made by the accused, to any one, may be given in evidence, but any evidence which has been obtained from a prisoner in consequence of any threat, promise or inducement made to the prisoner by any person concerned in the apprehension, examination, or prosecution of the prisoner, will render such evidence inadmissible”—Stephen on Evidence p. 28. But any fact discovered in consequence of information so obtained, may be given in evidence. The statement of one prisoner is not evidence for or against another prisoner. The principle of refusing confession as evidence against prisoners is now held by English Judges, to have been carried too far, and there is now a general feeling against the rule. (*R. v Reeve, L. R., I. C. C. R., 302.*)

The safe rule for constables is always to *caution* a prisoner after he has taken him into custody—to tell him the charge against him, and then say, “you are not obliged to say anything to criminate yourself, either from inducements or threats, but anything you do say, may be given in evidence against you upon your trial.”

CONSTABULARY.—The police force of the Colony consists of two classes of constables, the regular force designated in the Statute Book as “The Constabulary Force of Newfoundland,” and *local* constables, of whom only a few now remain. These outpost constables are not superseded; they remain under the orders of the Inspector and General Superintendent of the Police, but are exempted under the law from the provision as regards uniform, etc.

Constables.

CONSTABLES.—The Stipendiary Magistrate and the policeman in the outposts are the representatives of the law. They should endeavor by all means to work harmoniously together. As regards the drill, discipline, etc., of the police, the Magistrate has nothing to do with these matters, they are entirely under the control of the Inspector and officers of the police. The Magistrate, however, is responsible to the government for the maintenance of good order within his district, the detection of crime, arrest of criminals, and generally the carrying out of the law—very large powers and authority are given to Magistrates by Imperial and Local Acts. The Policeman is the Executive Officer of Justice, and he must attend to all lawful orders of the Magistrate and obey them implicitly, he should also attend strictly to all suggestions of the Magistrate in carrying out the law; he should keep his worship fully informed of all matters of a public nature that come to his knowledge. Our criminal law is the English law, and the practice and rules of the English police as far as the same can be applied to this Colony are our rule and guide. In the leading English text book on this subject, the duties of a constable are thus laid down:—

“A constable should learn, and ever practise the first and most important rule of discipline, namely, to receive the lawful commands of his superior officers with deference and respect, and execute them without delay.

“The lawful orders and commands of magistrates are to be *at once obeyed*. Magistrates should always be saluted when met, and a constable when addressing a Magistrate or giving evidence in Court should stand in an upright and respectful position. The constable will always remember that the object of arresting a prisoner is to *bring him before a Magistrate* as soon as he reasonably can. A police officer or policeman

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Constables—Special Constables.

has no personal power of discharging a prisoner except in the case of the arrest of an entirely innocent person when further detention would be illegal, but having taken a suspected person into custody he must, except in the case mentioned on page 71, be conveyed before a Magistrate as soon as possible, to be dealt with according to law." (Snowden.)

The Magistrate should treat the constable with fairness and consideration, and protect him as far as possible in the lawful discharge of his duty; persons who wantonly assault him or obstruct him in the discharge of his duty should be punished. (See page 64, as regards assaults on police.)

CONSTABLES-SPECIAL when appointed under the following provisions, are provided with a badge to wear on the right arm and a baton.

"Whenever it shall be found that the ordinary constabulary force is insufficient to maintain the public peace of any locality, any Stipendiary Magistrate, or in his absence a Justice, may call on and appoint such number of persons as may be deemed necessary to act as special constables in such locality; and every Stipendiary Magistrate or Justice may administer to every person so appointed the following oath:

"I, _____ do swear that I will well and truly serve our Sovereign Lady the Queen in the office of special constable for the district of _____ without favor or affection, malice or ill will; and that I will, to the best of my power, cause the peace to be kept and preserved, and prevent all offences against the persons and properties of her Majesty's subjects; and that I will discharge the duties of my said office faithfully, according to law. So help me God.

"And if any person, being so called on or appointed a special constable, as aforesaid, shall refuse to take said oath when required by the Stipendiary Magistrate or Justice so

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appointing him, he shall be liable to be convicted thereof forthwith, before the Stipendiary Magistrate or Justice so requiring him, and to forfeit and pay such sum of money, not exceeding twenty dollars, as to said Magistrate or Justice may seem meet, or imprisonment for a period not exceeding two calendar months: Provided that whenever it shall be deemed necessary to nominate and appoint such special constables, notice of such nomination and appointment, and of the circumstances which rendered such nomination and appointment necessary, shall be forthwith transmitted by the Stipendiary Magistrate or Justice making such appointment to his Excellency the Governor in Council."

Magistrates should not appoint special constables except for urgent reasons when trouble is anticipated at a wreck, or election, &c. The Attorney General should always be consulted in such cases and information sent to him by telegraph. In selecting the Specials care must be taken to choose men of substance and determination who will act with decision and firmness.

COPYRIGHT.—See *Printed Books*.

CORN MEAL.—Standard weight of barrel 196 lbs.; half barrel 98 lbs.

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CORONERS.

CORONERS.—The office of Coroner has been abolished in this colony, and the duties hitherto performed by that official are now discharged by Stipendiary Magistrates.

1.—The Local Act 38 Vic., Cap. 8, Sec. 1, abolished the office of Coroner and did away with Coroners' Juries; and in the second section it is provided that in place of a Coroner's Inquest, an enquiry respecting the death shall be held by a Stipendiary Magistrate (*a*), who for that purpose has all the powers of a Coroner.

2.—The Coroner's Inquest was only a preliminary enquiry, and for the purposes of investigating into crime, it was found a cumbersome, expensive and unsatisfactory machinery. In many instances, after all the investigation had gone on before the Coroner's Jury, the Depositions had to be taken over again before a Magistrate; it was, therefore,

(*a*) The Magistrate could only investigate where there was some criminal charge. The Coroner could hold an inquest in all the cases mentioned in the 4th section, even where there was not the smallest suspicion of crime. It is in the interest of society that every sudden death should be investigated; in the majority of instances the causes of death is clear, and then the enquiry will be a mere matter of form; but sometimes there may be suspicious circumstances, and in those cases the Justice should use every precaution not to let the suspected or guilty party escape. When the enquiry shapes itself into a criminal charge, the Magistrate will proceed to take the depositions as for an indictable offence, as directed in Chapter 8 & 9.

Coroners.

very wisely abolished. It was a very ancient institution, and in its day had been of good service, but for the detection of crime, a Magisterial enquiry, conducted, when *necessary*, with secrecy, and with promptitude, is found much more efficient and economical.

3.—Enquiries into sudden deaths are amongst the most difficult and responsible duties a Magistrate has to perform, they are also nearly always of an unpleasant nature. The investigating Magistrate should in all cases see the body of the deceased; it is not absolutely necessary that he should hold his enquiry as the Coroner was bound to do, "*in view of the body of—deceased, then and there lying dead;*" but it is advisable in all cases that he should see the body, and in all cases he should have the body identified. Some times these enquiries, even when they do not involve a criminal charge, are of a very important public nature; they may, as the *Tigress* enquiry, or the recent *Thunderer* enquiry in England did, involve the question respecting the safety of boilers, sometimes, as in the *Mayaguezana* enquiry, questions of seamanship and the duties of pilots, questions as to the proper working of mines, and a variety of other questions may be involved. In all such cases the Magistrate is expected to conduct the enquiry with intelligence and discretion, and above everything to act independently, "*without fear, favor or affection*" towards any one.

4.—"That, in all cases of persons slain, drowned, suddenly dead, *felo de se*, or dead in prison, or in cases where the medical attendant on any deceased person shall refuse to certify that such deceased person died from natural causes, an enquiry respecting the death of such person shall be held by a Stipendiary Magistrate; and for that purpose, in addition

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Coroners.

to all other powers possessed by him as such Stipendiary Magistrate, he shall have and exercise all the powers, excepting the power of summoning Juries, which now is or may hereafter be vested in a Coroner under the law of England; and the proceedings in such enquiry, and all depositions connected therewith, shall be transmitted to the Attorney or Solicitor General for such further proceedings as may be required by law." (a). 38 Vic., c. 8, sec. 2.

These powers include authority to summon and compel by warrant the attendance of all necessary witnesses and the production of all papers, &c. To enter all places where the dead bodies may be, and also, when *necessary*, to disinter the body.

5.—The following fees shall be allowed and paid on such enquiries, viz.:—

Fee for one medical witness.....	\$5 00
Every necessary post mortem examination.....	5 00
Every necessary witness (each day's attendance)...	0 75

And reasonable expenses actually incurred and authenticated by proper accounts and vouchers. The Government shall defray any further reasonable and necessary charge that may be incurred in special cases. (b). *Idem*, Sec. 3.

COSTS.—The table of costs in civil cases before Magistrates and the District Courts will be found under these heads.

(a) It is nearly always advisable for the Magistrate in forwarding the depositions to write to the Attorney or Solicitor General fully on the subject.

(b) All the vouchers should be certified by the Magistrate holding the enquiry; he should not request the Doctor to hold a post mortem examination unless there is an absolute necessity for it, and some important information to be gained by it. The Magistrate gives the authority to hold the post mortem.

Coves—Public.

COVES—PUBLIC.—Any person who shall hereafter in any way encumber, make erections across or obstruct any of the public coves, or the waters thereof, shall be liable to a penalty not exceeding ten dollars: Provided, that this section shall not affect the rights of parties to have vessels or boats at wharves adjoining the public coves for the purpose of loading or discharging cargoes.

COVES.—Throwing dirt, rubbish, &c., into the public coves. Penalty not exceeding \$25.

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CRIMINAL LAW.

CRIMINAL LAW.—Application of English law and practice.
Title IV.

1.—In all cases not provided for by local enactment the law of England, as to crimes and offences, shall be the law of this Island and its Dependencies, so far as the same can be applied,—subject to such amendments, alterations, and further enactments of the Imperial Parliament as may hereafter be made, and which shall, after twelve months from the passing thereof, respectively be the law of this Island and its Dependencies: Provided, that between the time of the passing of any law and its coming into force in this Island and its Dependencies, the law as it previously stood shall continue to be in force therein.

2.—All pecuniary penalties imposed by any law of England which shall, according to the provisions of this Chapter, be in force in this Colony, shall be adjudged to be distributed in the following manner, namely: such part to the informer as the law of England may provide, and the remainder, or the whole where no part shall go to the informer, to be paid into the public treasury for the use of the Colony.

3.—Where by any act of the Imperial Parliament any criminal jurisdiction, or authority by way of appeal, adjudication of reserved points, removal, or otherwise, is or shall be

vested in the English Courts of Queen's Bench, Common Pleas and Exchequer, or any of them, or the Justices or Barons thereof, or any number of such Justices or Barons, or in any other Superior Court or Judges, such jurisdiction or authority shall be exercised by the Supreme Court, or the Judges thereof, as in the case of appeals provided by the Judicature Act.

4.—The act of the Imperial Parliament, passed in the eleventh and twelfth years of the reign of her present Majesty, (chapter forty-two,) entitled "An act to facilitate the performance of the duties of Justices of the Peace out of sessions, within England and Wales, with respect to persons charged with indictable offences;" and another act of the same year and reign, (chapter forty-three,) entitled "An act to facilitate the performance of the duties of Justices of the Peace out of sessions, within England and Wales, with respect to any convictions and orders;" also an act passed in the eleventh and twelfth years of the reign of her present Majesty, (chapter forty-four,) entitled "An act to protect Justices of the Peace from vexatious actions for acts done by them in execution of their office;" also an act passed in the twentieth and twenty-first years of the reign aforesaid, (chapter forty-three,) entitled "An act to improve the administration of the law, so far as respects summary proceedings before Justices of the Peace;" also, an act passed in the twenty-eighth and twenty-ninth years of the reign aforesaid, (chapter one hundred and twenty-seven,) entitled "An act to amend the law relating to small penalties;" shall as heretofore extend to and be the law of this Colony so far as the same can be applied. In all cases in which statutes of the Imperial Parliament of Great Britain, in amendment or alteration of the criminal law in England, are or shall hereafter be held to apply to this Colony, all statutes now or hereafter to be passed relating to jurisdiction, power, practice, and protection, having reference to the operation or execution of such statutes, shall be held also to extend to and be the

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Criminal Law.

law of this Colony after twelve months from the passing of the same, so far as the same can be applied.

5.—Where any mode of practice is or hereafter may be prescribed by a local law, which may or can be applied for the purpose of carrying out the provisions of any Imperial act which shall be held to extend as aforesaid to this Colony, such mode of practice may be used, and shall be regarded as a cumulative remedy.

6.—In all cases where by the law of England offences are or shall be punishable with penal servitude, the Supreme Court of this Colony may in its discretion sentence offenders convicted before such Court of the like offences to imprisonment with or without hard labor, and with or without any other punishment to which such offenders may by law be liable for any term not exceeding the longest term of penal servitude provided for the like offences by the law of England.

“Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling or otherwise disposing whereof, shall amount to a felony either at common law or by virtue of any statute in force in this Colony, knowing the same to be feloniously stolen, taken, extorted, obtained, embezzled, or disposed of, may be indicted and convicted of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to such punishment as now is or may be provided by the laws of this colony for the offences aforesaid.”

7.—It sometimes happens that a particular Imperial Statute, respecting Criminal Law, applies only to Ireland or to Scotland, and some apply only to England. It is well to bear this in mind, as a good deal of the Criminal Law applied to Ireland *only* is not the Law of this Colony. (a) The Law

(a) I refer to this because the Justice may possibly get hold of an Act applicable to Ireland *only*, or to a work on the duties of Justices in Ireland, which would mislead him.

Criminal Law.

of *England*, as to crimes and offences, being our Law, where it can be applied, must be taken to mean the Acts of the Imperial Parliament in criminal matters, applicable, generally, to England, Ireland, and Scotland, or the British empire, and also the Criminal Law, even when it is applicable to England alone.

8.—Where there is a Local Law prescribing the mode of procedure, and the punishment for any offence, the Local Law had better be followed, and not the English Law, respecting such offence. For instance, under the Local (*a*) Law, with respect to malicious injuries to property, the Justice trying the case can only adjudge the offender to *pay* a sum of money for the injury, and in default of *payment* to imprison. Under the English Act, the punishment is in the discretion of the Justice, either fine or imprisonment.

9.—The last question which a Justice has to ask himself: Is this an offence provided for by Local Law? If it is, he had better follow the Local Law. If it is not, he must find out what the Criminal Law of England is, with respect to this particular offence; and having found it, he has then to ask a third question, "Does the English Law apply to this Colony?"

10.—As a general Rule all English Criminal Law, of a special local character, such as the Laws with respect to offences against the Game Laws, Fisheries, Stamp Acts, English Customs Laws, Poor Laws, Turnpike Acts, and other kindred subjects, are not applicable here. It has been held that the Tippling Act applies to this Colony,—whilst penal

(a) Consolidated Statutes, p. 227.

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Criminal Law.

statutes, concerning Horse Racing, 13 Geo. 2, C. 19; 18 Geo. 2, C. 24, were held not to apply. (a)

11.—The applications of English Criminal Law to this Colony would appear at first sight to present great difficulties, but practically, as Mr. Archibald observes, (b) "Scarcely an instance has occurred since the passing of the Act in question, in which any difficulty of this nature in the administration of the Law has arisen in the Superior Courts."

12.—It is therefore very improbable that any difficulty of the kind will arise before Justices of the Peace, and less so now that the Criminal Law, Consolidation and Amendment Acts, 24 & 25 Victoria, from Cap. 94 to 100, have simplified the Law very much, and made its Local application very clear.

(a) *Morris v Berrigan*, see Note to E. M. Archibald, Dig. p. 40.

(b) E. M. Archibald's Dig., p. 41.

CRUELTY TO ANIMALS.

CRUELTY TO ANIMALS.—The object of this act is to prevent the two-legged human brute from torturing and slowly doing to death the noble beasts which Providence has placed under the dominion of man. Whenever a case occurs the person who sees the act committed, after getting the name and address of the offender, should at once notify the first policeman he meets, or send information to Geo. M. Johnson, Esq., Q.C., or D. J. Greene, Esq., Q.C., the active officers of the Society for the Prevention of Cruelty to Animals, who will take charge of the proceedings and defray all expenses. The following is the law on this subject:—

1.—If any person shall—

- (1) Cruelly beat, bind, ill-treat, over-load, over-drive, over-ride, abuse, neglect, expose, torture; or
- (2) Cause to be cruelly beaten, bound, ill-treated, over-laden, over-driven, over-ridden, abused, neglected, exposed or tortured, any animals, such offender shall, for every such offence, forfeit and pay a penalty not exceeding twenty-five dollars.

2.—If any person by cruelly beating, binding, ill-treating, over-loading, over-driving, over-riding, abusing, neglect-

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Cruelty to Animals.

ing, exposing or torturing any animal, do any damage or injury to any animal, or shall thereby cause any damage or injury to be done to any person or to any property, every such offender shall, on conviction of such offence, pay to the owner of such animal, (if the offender shall not be the owner thereof), or to the person who shall sustain damage or injury as aforesaid, such sum of money by way of compensation not exceeding twenty-five dollars, as shall be ascertained by the Justice of the Peace by whom such person shall have been convicted: Provided always, that the payment of such compensation or any imprisonment for the non-payment thereof, shall not prevent or in any manner affect the punishment to which such person or the owner of such animal may be liable for or in respect of the ill-treating or abusing of the said animal: Provided also that nothing herein contained shall prevent any proceedings by action against such offender, or the employer of such offender, where the amount of damages or injury is not sought to be recovered under this Act.

3.—If any person shall convey, or carry, or cause to be conveyed, or carried in or upon any vehicle, or permits, or allows to remain in or upon any vessel, wharf or premises, any animal, in such a manner or position so as to subject such animal to unnecessary pain or suffering, every such person shall forfeit and pay a penalty not exceeding twenty-five dollars.

4.—If every cart or other vehicle, with shafts used for draft purposes, shall be provided with a sufficient pritchet or support, which shall be placed, when the vehicle is stationary, under the shafts thereof, in such a manner as to leave the animal tackled to such vehicle free from the weight of the

Cruelty to Animals.

load thereon. Any person driving any cart or vehicle not provided with such pritchet or support, or neglecting to use the same when necessary, shall be liable to a penalty not exceeding ten dollars.

5.—That when, and so often as any of the offences against the provisions of this Act shall happen, it shall and may be lawful for any constable, upon his own view thereof, or upon the complaint and information of any other person who shall declare his or her name and place of abode to the said constable, without further authority or warrant, to arrest and provide for such offender's appearance before a Justice of the Peace, to be dealt with by such Justice under the authority of this Act.

6.—Whenever any person having charge of any vehicle or any animal, shall be taken into custody by any constable for any offence against the provisions of this Act, it shall be lawful for such constable to take charge of such vehicle or animal, and deposit the same in some place of safe custody as a security for payment of any penalty to which the person having had charge thereof, or the owner thereof, may become liable, and for payment of any expenses which may have been or may be necessarily incurred for taking charge of, and keeping the same, and it shall be lawful for any Justice of the Peace before whom the same shall have been heard, to order such vehicle or such animal to be sold for the purpose of satisfying such penalty and reasonable expenses, and in default of payment thereof, in like manner as if the same had been subject to be distrained and had been distrained for the payment of such penalty and expenses.

7.—Every complaint under the provisions of this Act

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Cruelty to Animals.

shall be made within one calendar month after the cause of such complaint shall arise, and every offence committed against this Act may be heard and determined by any Justice of the Peace within whose jurisdiction such offence shall be committed, in a summary way, upon the complaint of any person, and without any information in writing, and if the party accused shall be convicted of having committed the offence charged or complained of, the party so convicted shall pay such penalty, damage or compensation as the said Justice shall, according to the provisions of this Act, adjudge, order or award, together with the costs of conviction to be settled by such Justice.

8.—In every case of a conviction under this Act, where the sum imposed as a penalty or the amount awarded for compensation or damages, together with costs (if any) by any Justice of the Peace, for or in respect of any offence against the provisions of this Act, shall not be paid immediately upon the conviction or within such time as the convicting Justice shall, in the exercise of his discretion, appoint and limit in that behalf, the same may be recovered by distress upon the offender's goods and chattels, or the Justice may commit the offender to prison, with or without hard labor, for any time not exceeding one calendar month, unless payment be sooner made.

9.—The word animal under this Act shall be taken to mean any horse, mare, gelding, bull, ox, cow, heifer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or any other domestic animal.

CROWN LANDS.—See page 42 to 47, how to obtain a grant of Crown Land.

CURRENCY.

1. The denominations in money in the currency of Newfoundland shall be dollars and cents, in which currency the cent shall be the one-hundredth part of a dollar. All accounts shall be kept, and all moneys paid and received in such currency; and in any statement as to money or money value, in any indictment or legal proceeding, the same shall be stated in such currency. No statement of account of any debt contracted within this colony by parties resident within this colony shall be binding or valid unless the same shall be rendered, stated or declared in dollars and cents.

2. The British sovereign, of the weight and fineness now prescribed by the laws of the United Kingdom shall be equal to and shall be a legal tender and pass current for four dollars and eighty-six cents and two thirds of a cent of the currency of Newfoundland, and a half-sovereign of proportionate weight and like fineness for one-half of the said sum.

3. The silver coins of the United Kingdom while lawfully current therein, shall pass current and be legal tender for sums in the currency of Newfoundland after the rate fixed, as aforesaid, for the gold coins of the United Kingdom, according to the proportion such silver coins bear to such gold coins.

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4. The copper or bronze coins of the United Kingdom shall pass current and be legal tender in this Colony.

5. Her Majesty may, by proclamation, from time to time, fix the rates at which any foreign gold coins of the description, date, weight and fineness, mentioned in such proclamation shall pass current and be a legal tender in Newfoundland: Provided that, until it is otherwise ordered by any such proclamation, the Gold Eagle of the United States of America, coined after the 1st day of July, one thousand eight hundred and thirty-four, and before the 1st day of January, one thousand eight hundred and fifty-two, or after the said last mentioned day, but while the standard of fineness for gold coins then fixed by the laws of the said United States remains unchanged, and weighing ten pennyweights, eighteen grains Troy weight, shall pass current and be a legal tender in Newfoundland for ten dollars, and the gold coins of the said United States being multiples and halves of the said Eagle and of like dates and proportionate weights, shall pass current and be a legal tender in Newfoundland for proportionate sums.

6. The stamp of the year on any foreign coin made current by this Act or any proclamation issued under it, shall establish *prima facie* the fact of its having been coined in that year, and the stamp of the country on any foreign coin shall establish *prima facie* the fact of its being the coinage of such country.

7. The gold, silver, copper or bronze coins which Her Majesty may cause to be struck for circulation in Newfoundland shall pass current and be a legal tender in Newfoundland at the rates assigned to them, respectively,

by Her Majesty's Proclamation, the standard of fineness of such coins being the same as that now adopted for coins of the United Kingdom and their intrinsic value, bearing the same proportion to their current value as coins of the United Kingdom bear to their current value.

8. All gold, silver, copper and bronze coins heretofore imported by the Governor in Council into this Colony shall pass current and be a legal tender under this Act at the rates expressed on the face of the said coins respectively.

9. All such silver coins aforesaid shall be a legal tender to the amount of ten dollars only, and such copper or bronze coins to the amount of twenty-five cents only in any one payment.

10. No other silver, copper or bronze coins than those aforesaid shall be a legal tender in Newfoundland.

11. No tender of payment in money in any gold, silver or copper coin, which has been defaced by stamping thereon any name or word, whether such coin is or is not thereby diminished or lightened, shall be a legal tender.

12. Any person who shall falsely make or counterfeit any coin resembling, or apparently intended to resemble, or pass for any gold or silver coin current under or by virtue of this Act or any proclamation thereunder, or who shall import into this Colony any such false or counterfeit coin, shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned, with hard labour, for any term not exceeding four years, and every such offence shall be deemed to be complete, although the coin so made or counterfeited shall not be in a fit state to be uttered or the counterfeiting thereof shall not be finished or perfected.

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13. Any person who shall tender, utter or put off any such false or counterfeit coin, knowing the same to be false or counterfeit, shall be guilty of a misdemeanor, and being convicted thereof, shall be imprisoned, with hard labour, for any term not exceeding one year.

CUSTOMS.

CUSTOMS.—The whole law on this subject is too long and too complicated for full insertion; I have, therefore, given only a synopsis of the most important sections of the Consolidated Law (the Customs Management Act); the Board of Revenue Act is given in full.

BOARD OF REVENUE.—The Receiver General shall be president of, and with five other persons, to be appointed by the Governor in Council, shall constitute the Board of Revenue, the members of which shall be sworn faithfully to discharge the duties of their office, and shall hold office during pleasure; the President, or in his absence the Assistant Collector, and any other two members, shall be a quorum for the transaction of business.

There shall be paid to each non-official member, for every day's attendance at the Board, two dollars a day: Provided that the whole amount to be paid to the said Board shall not exceed the sum of two hundred and thirty dollars in any year.

The Board shall superintend the working and practical operation and effect of the revenue system, and report thereon to the Governor when required; they shall examine disputed claims for drawbacks, and grant certificates therefor,

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when allowed, and shall make any regulations necessary for preventing fraud in obtaining the same; they shall direct and carry on prosecutions against delinquent officers and their sureties; and also prosecutions for seizures, forfeitures, penalties and breaches of revenue laws, over which they have a general control; they may remit penalties in whole or part, and direct the restoration of property seized, or of the proceeds thereof; they shall, subject to the control of the Governor in Council, make such regulations as to the removal of spirituous liquors distilled in the Colony after payment of duties thereon, and as to the carriage of goods coastwise, as may be necessary and expedient; they shall have authority to remit in whole or in part the duties on goods lost or destroyed in the warehouses, upon such terms as they may deem just; and may, under such restrictions and regulations as they may consider expedient, but subject to the control of the Governor in Council, permit permanent or continuing security to be given for duties payable by outport importers, in cases where satisfactory sureties cannot be had on the spot for each successive importation, and also for the payment of duties on goods landed from steamships.

CUSTOMS.—I have made this synopsis of the Customs' Management for the information of outport Magistrates and Custom House Officers. Under the writ of assistance Magistrates, Policemen and all outport Constables, whenever their services are required under the provisions of Sec. 79, must do all in their power to assist the Custom House Officer, both to search for smuggled goods and to secure them. This writ of assistance was granted recently; it continues in force during the reign of Her present Majesty, and until twelve months after her death.

Customs.

Some smuggling is carried on in all countries, and it will always probably exist in Newfoundland. If, however, the Preventive Officers are active and vigilant smuggling will become a very risky business,—so dangerous that none but very small traders and very small craft will run their chances of being caught.

The attention of outport officers is specially directed to Sec. 109, under which they have immense powers to prevent smuggling by vessels with dutiable goods aboard entering places not a port of entry.

In order to protect the Revenue it has been found necessary to pass most stringent laws. Under the English Crown these apparently tyrannical powers are always exercised with moderation and justice. Custom House officers are specially cautioned not to act harshly or tyrannically, and never to be influenced by personal malice in the discharge of their official duties.

Custom House Officers will observe the strong protection which the law has thrown around them in the discharge of their duty when they act *bona fide* and have reasonable grounds for suspecting that smuggling is going on, or that smuggled goods are being landed, or are about to be landed, or are concealed anywhere, the law gives them almost absolute powers to deal with such cases. It is their duty to act on such occasions with vigour, activity and boldness,—any one who assaults them or their assistants in the discharge of their duty, or obstructs or molest them, is liable to most severe punishment. When they act on reasonable grounds of suspicion the law protects them, the Judge at the trial can certify on the Record that the officer acted on *probable* cause, then

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Customs.

the plaintiff can only recover five cents damages and *no costs*. (Sec. 88.) Under our Revenue Laws, no one would dare take an action against a Custom House Officer unless the official were completely in the wrong and had acted entirely without cause and from some personal or malice as motive. Secs. 82 to 88 throw a complete shield around the officer acting *bona fide*, and in all cases where he acts honestly in the discharge of his duty he can count on the protection of his superiors. Whilst officers are advised to be prompt and vigilant, they are also reminded that it is their duty to be uniformly courteous and polite in their manner; they must never act the tyrant "clothed in a little brief authority," especially to strangers their manner must be uniformly civil, and on all occasions however provoked they must endeavour to keep their tempers; the use of coarse, rude, or profane language is specially forbidden.

BRIBERY and the taking of bribes is now a very rare offence amongst our Custom House officers. Whenever such a case is proved, both the law and public sentiment will visit this disgraceful crime with condign punishment both to the briber and the bribed.

Sec. 5.—If any officer, clerk, or other person, acting in any office or employment under the provisions of this Act, shall take or receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any sort or description whatever, directly or indirectly, from any person (not being a person duly appointed to some office under this Act) on account of anything done or to be done by him in, or in anywise relating to his said office or employment, except such as he shall receive under any order or permission of the Governor, any

Customs.

such officer so offending shall, on proof thereof to the Governor in Council, be dismissed from his office; and if any person (not being a person duly appointed to some office under this Act) shall give, offer, or promise to give, any such fee, perquisite, gratuity, or reward, such person, for every such offence, shall forfeit the sum of four hundred dollars.

Sec. 6.—Every person who shall be appointed to any office or employment under this Act, shall, on his admission thereto, make and sign the following oath before a Justice of the Peace, that is to say:—

“I, A. B., do swear that I will be true and faithful in the execution, to the best of my knowledge and power, of the trust committed to my charge and inspection, and that I will not require, take, or receive, any fee, perquisite, gratuity, or reward, whether pecuniary or of any other sort or description whatever, either directly or indirectly, for any service, act, duty, matter or thing done or performed in the execution or discharge of any of the duties of my office or employment, on any account whatever, other than my salary, and what is or shall be allowed me by law, or by any special order of the Governor for the time being.”

JOHN SNOOKS.

Sworn before me at
this day of , A.D 189)

J. WILLS, J. P.

The powers of the Custom House officers, both to prevent smuggling and to deal with offences against the revenue laws, may be divided into three heads:—

1.—*Precautionary Powers.*

2.—*Powers in Rem.* [Seizures, &c.]

3.—*Powers in Personam.*—Arrest and personal punishment of offender.

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Throughout this part of the work I use the word *officer* to include all officers of the customs and the words *customed* and *uncustomed*, to mean goods that have and have not paid duty.

I. PRECAUTIONARY SEARCHING POWERS.—The great precautionary power is the right of search. It extends to all importing and exporting vessels and boats, to all imported goods and all exports.

The right of search also extends to the person (Sec. 12):
 "Any officer of Customs, or person by him authorized, may search any person whom he may have reasonable cause to suspect of having uncustomed goods secreted about his person."

If the person to be searched demands to be taken before a Magistrate or a superior officer of Customs before being searched he must be brought before them by the officer with all reasonable despatch.

No female can be searched except by a woman.

SEARCH ON LAND.—To search houses, stores, and property on land, the officer should require the assistance of the Police, and all Magistrates and Police are bound by law, under the writ of assistance, to give the officer every aid in their power. (Sec. 79.)

An officer under this section may, in the day time with a policeman, break open doors, chests, trunks, and packages.

Carts, waggons, and other conveyances may be stopped and examined, anywhere if there is reasonable suspicion or

Customs.

probable cause to suspect that they are carrying uncustomed goods.

An officer may also go before a Magistrate and make a deposition and obtain a Search Warrant to search for smuggled goods; in doubtful cases this is sometimes the best course to adopt.

FORM OF COMPLAINT.

District, }
to wit: }

NEWFOUNDLAND.

The complaint of John Snooks, of _____, Custom House officer, (Sub-Collector, or as the case may be) taken upon oath before me, the undersigned Justice of the Peace, (or Stip. Mag.) for the said District, who saith on the _____ day of _____ the schooner _____ arrived from St. Pierre. From information received I believe she brought the following goods to _____. These goods have not been reported to me or entered; I believe they are now concealed in the dwelling house, store, &c., of _____ and I pray a warrant to search for the said goods.

JOHN SNOOKS.

Sworn before me at _____ this _____ }
day of _____ A.D. 189 . }

J. WILLS, J.P.

2. POWER IN REM—SEIZURE.—This means the proceedings in which the property is seized. All dutiable goods passed into use without being customed, and all goods to which restrictions on importation apply, (indecent pictures, &c.,) are liable to seizure and in due course to forfeiture. The power of forfeiture goes beyond the goods themselves, and includes the package in which the goods are found and all the contents thereof. (Sec. 100.)

All cattle employed, and boats, carts, and other conveyances, used in any way in landing or conveying the forfeitable goods are also forfeited.

Customs.

The power of seizure and forfeiture is moreover made an easy weapon in the hands of the Customs, the claimant must give notice to the officer and also give security. (Secs. 83 and 84.

If the seizure is not made in the presence of the offender, where possible, it is advisable for the seizing officer to give notice in writing of it to the owner or master, but the work of the Customs ceases upon the seizure itself, and the forfeiture becomes absolute, unless the owner or master, within one calendar month from the date of seizure, gives notice in writing, that he claims the property, unless this notice is given, the property may be condemned and sold at Public Auction, (Sec. 78;) but no sale should take place until the expiration of the 30 days and until they are condemned.—(Sec 80.) If this notice is given the Crown should bring the case into Court either before a Magistrate or Supreme Court; practically, however, the act of seizure is regarded and generally operates as a decision of condemnation.

In case of perishable goods being seized they should be sold by Public Auction after the expiration of 2 days, and where possible, the owner or importer should be notified of the sale.—(Sec. 23.) As a matter of fact the forfeiture of any thing beyond the actual offending goods themselves is a power most cautiously exercised.

3. IN PERSONAM—ARREST OF OFFENDERS, &C.—TRIAL.—When such notice is given, two courses may be pursued.

The Board of Revenue have general control of all prosecutions for seizures, forfeitures, penalties, and breaches of the Custom Laws; they may remit penalties in whole or in

Customs.

part, and direct the restoration of property seized. They have no power to try criminal cases or to enforce their decision by imprisonment, &c. If the Board decide not to deal with the case, the other alternative is to take proceedings against the party charged. The officer is guided entirely by the direction of the Board, represented by the Receiver General. If he receives orders to prosecute, he will go before a Magistrate, and the best course is to make a deposition stating the facts, the Receiver General will also give him orders as to whether the case is to be prosecuted summarily, or to go before the Supreme Court; supposing it is to be tried before the Magistrate, he may either arrest or summon the party, and try the case in the ordinary way; the limit of the Magistrates' jurisdiction is \$200 and imprisonment not exceeding six months. In dealing with Revenue cases, the Magistrate must remember that although an absolute sum is fixed by many sections of the Act as a fine, the Summary Jurisdiction Act, 1879, applies to all cases of first offenders, he can lessen the fine and subject to fixed limits or to proportion between fine and imprisonment: (see Summary Jurisdiction,) he can adjudge in all cases the precise sentence in default of payment.

The special provisions of the Customs Management Act, not inconsistent with the general law, are not abrogated by the Summary Jurisdiction Acts. In England in important cases a remand of the accused is requested for the consideration of the Board of Revenue, and is always allowed for, although the Magistrate has ample power of mitigation, the expressed opinion of the Board of Revenue should always weigh with the Bench. The Crown, at all times before conviction, may remove the case from the jurisdiction of the Magistrates into the Supreme Court.

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The District Judges and Stipendiary Magistrates in St. John's and Harbor Grace, as Stipendiary Magistrates for Newfoundland, can try cases arising anywhere in the Colony.

There is an appeal in all cases against the decision of the Magistrates to the Supreme Court.

In all important cases the offender will be brought before the Supreme Court either on Circuit or at St. John's. The matter will then be in the hands of the Attorney General or Crown Prosecutor. The officer should be careful to make a full note of his evidence, writing it down at the time or immediately after; also the evidence of other witnesses he has to bring forward. In every matter of doubt or difficulty the officer must communicate with the Receiver General where it is possible to do so; where this is impossible he must act on his own responsibility, and remember always it is his duty to protect the Revenue.

SYNOPSIS OF CUSTOMS MANAGEMENT ACT.

Interpretation of terms. (Sec. 1.)

Governor in Council may appoint proper officers for Custom House duty. (Sec. 2.)

Ports of entry officers; alterations. (Sec. 3.)

Extra officers may be appointed. (Sec. 4.)

Bribery. (Sec. 5.)

Oath of office. (Sec. 6.)

Customs.

Security for good conduct. (Sec. 7.)

Officers exempt from juries. (Sec. 8.)

Public holidays in the Department. (Sec. 9.)

Vessel to report at Custom House immediately on arrival without breaking bulk, and report with due information as to cargo, crew, voyage, &c. Penalty for untrue report or untruthful answers, \$400; goods not reported forfeited. (Sec. 10.)

Master must deliver at same time manifest of cargo with every particular about cargo. (Sec. 11.)

Vessel arriving coastwise with dutiable goods aboard to report within twenty-four hours. (Sec. 12.)

Coasters and fishing vessels outward entry and clearance sufficient to 31st Dec., forfeiture if dutiable goods aboard. Penalty for leaving without clearance certificate, \$200. (Sec. 13.)

Vessels outward bound, entry of contents of cargo, declaration, certificate of clearance, untruthful declaration or answer, or sailing without clearance; penalty \$400. (Sec. 14.)

Goods imported for exportation; security in treble the amount of duties that such goods will be duly landed at the port for which they are reported for entry. No such goods for export to be landed except as at port of entry, (Sec. 15.)

Tide Surveyor, or other proper officer may board any ship arriving in this colony and stay aboard until all cargo is delivered; power to fasten down hatchways, lock and seal up goods, and if keys of locked box not produced officer above

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degree of tidesman or boatman may open any such box, &c, in the best manner in their power. Opening hatchways or breaking seals, &c., placed by officer; master to forfeit not exceeding \$400. (Sec. 16.)

No goods to be unladen on shore or within three miles of the coast without entry made and warrant granted for the unloading of the same, nor in the absence of the Custom House officer. Goods unladen contrary to law to be forfeited; master to forfeit \$400. (Sec. 17.)

Revenue officer may go aboard any vessel within three miles of the coast and may stay aboard whilst she remain in port or at such distance; may examine the master on oath touching cargo and voyage. For untrue answers, penalty \$200. (Sec. 18.)

Master must produce manifest of cargo to officer and deliver copy; officer to note on original manifest date of its production. Penalty for refusal to produce and make copy, \$200. (Sec. 19.)

Goods *ad valorem*, importer to make declaration as to true value; untrue declaration, penalty \$400. (Sec. 20.)

Original invoices to be produced when required and certified on oath that they are the original invoices, and that they contain all the dutiable goods imported, also value; wrecked or derelict goods to be charged on gross proceeds, or market value less 1-5 for duties, charges and expenses. (Sec. 21.)

Within five days, importer must produce invoices and answer questions; penalty for not answering questions truly, or not giving real invoice, or altering original invoice \$400. (Sec. 22.)

Customs.

If articles are undervalued Customs may take articles, paying imported his valuation with 10 per cent. and duty, and sell the same; proceeds over value, $\frac{1}{2}$ to informer, $\frac{1}{2}$ to Crown. (Sec. 23.)

Goods according to weight—if weight untrue, to be detained and forfeited. Goods so appraised—amount with 10 per cent. to be paid to the importer. Goods then to be sold and divided as in last section. (Sec. 24.)

Entry of goods must be written on Bill of Entry in words at length, containing name of master, ship, place of importation and lading, particulars of cargo—duty to be paid before warrant granted for unlading. (Sec. 25.)

Entry and Warrant must correspond with manifest and report. Penalty, forfeiture of goods. (Sec. 26.)

When importer not able to make perfect entry—entry by Bill Sight—5 days after, Importer to make perfect entry. If goods cannot be conveniently valued, importer may enter them at approximate value. If over valued, duty returned on over entry certificate. If under valued, importer shall pass post entry for difference. (Sec. 27.)

A proper officer may try samples. (Sec. 28.)

Bonds may be taken where duty amounts to \$200, with two sureties, payable in 4 months. No bonds to be taken for wines, spirits, sugar, or unmanufactured tobacco. (Sec. 29.)

Passenger steamers may deposit cargo in warehouse—bond; rights of owners and master reserved. (Sec. 30.)

Imported cattle may be landed at once. (Sec. 31.)

Customs.

Goods not to be imported from places beyond the sea, unless duly shipped and cleared outwards for exportation. (Sec. 32.)

Surplus stores liable to duty, unless shown that not excessive or unsuitable for voyage if not landed duty free. (Sec. 33.)

Entries must be made within 20 days, if not so made, officers may land same; sale of goods after 3 months. (Sec. 34.)

Goods damaged on voyage—abatement to be allowed must be claimed at first examination of goods. (Sec. 35.)

Officers to estimate damage. If unable to estimate damage, Receiver General to appoint two disinterested valuers; duty payable on their estimate of the value of the damaged goods. (Sec. 36.)

If goods on which full duty has been paid *ad valorem*, shall be damaged to an amount exceeding 50 per cent., abatement in proportion allowed same as per sec. 35. (Sec. 37.)

Governor in Council may appoint warehousing ports. Sections 39 to 59 relate to warehousing.

Drawbacks on export; full duty allowed; exporting vessel must be over 40 tons; amount of duty over \$12. Proof of landing, either from English Customs, Receiver General of a Colony, British Consul, or two well known merchants. (Sec. 61.)

Provision as to the size of casks of spirits to be carried coastwise, except from Europe, B. West Indies of B. Possession in N. America. (Sec. 62.) Sections 63 to 74 relate to distilleries.

Customs.

Vessels, boats, carriages, and cattle, used in the unlawful removal of goods liable to forfeiture under the Revenue laws, shall be forfeited. Every person who assists or is concerned in smuggling shall forfeit treble the value of property smuggled or a penalty of \$400. (Sec. 75.)

Goods, ships, boats, carriages, cattle, &c., liable to forfeiture, may be seized by officer or person employed by him; penalty for obstructing or assaulting officer or his assistants in the discharge of his duty about revenue, penalty \$800, or deemed guilty of misdemeanor, liable on conviction to be punished in the discretion of the Court. (Sec. 76.)

Collusive seizure by officers taking bribes, penalty \$2,000. Person giving bribes or inducing officer to neglect his duty, penalty \$800. (Sec. 77.)

Everything seized and forfeited under the Revenue Law shall be deemed and taken as condemned, unless the owner or some person authorized by him, shall within one month from seizure give notice of his claim. (Sec. 78.)

Judge of Supreme Court authorized to grant *Writ of Assistance*. With a Constable, Custom House Officer may enter any building in day time and search for smuggled goods, may break open doors, packages, &c. Person found in possession of smuggled goods, not accounting for the same satisfactorily, liable to penalty of \$400. *Writ of Assistance* lasts during the reign and 12 months after. (Sec. 79.)

Vessels, boats, goods, &c., seized liable to forfeiture, to be delivered to officer of port where seized, after condemnation, same may be sold by order of Receiver General, by

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public auction to highest bidder. Board of Revenue may order restoration upon condition. (Sec. 90.)

Proof of payment of duty in cases of seizure to lie on owner or claimants. (Sec. 81.)

Claims to property seized and returned into Court for adjudication, unless owner gives his name, occupation and residence, and swear to his ownership; penalty for false oath — misdemeanor. (Sec. 82.)

Security for costs to \$250 must be given before entry of claim to property seized. (Sec. 83.)

Month's notice must be given to officer before he can be sued for anything done in the execution of his office. (Sec. 84.) (a)

Action against Custom House Officer must be brought within three months. Defendant may plead general issue and give special matter in evidence. In case of nonsuit or verdict for defendant, the defendant shall receive treble costs. (Sec. 85.)

In such action where Judge certifies there was a probable cause of seizure, claimant not entitled to costs; if judgment given against defendant, claimant shall only have the property seized, or value thereof, and only five cents damages; nor shall the defendant in any such prosecution be fined more than one dollar. (Sec. 86.)

Officer may tender amends one month after notice, and may pay money into Court. (Sec. 87.)

(a) Custom House Officer cannot be sued as such before District Courts, Sec. 3, page 6.

Customs.

When the Judge certifies on the record, defendant acted on probable cause, plaintiff shall only have five cents damages and no cost. (Sec. 88.)

All fines must be paid over to the Receiver General to be divided— $\frac{1}{8}$ for duty, $\frac{3}{8}$ to informer, $\frac{3}{8}$ to officer who shall seize and sue for the same, $\frac{1}{8}$ to Board of Revenue; Board of Revenue may give this $\frac{1}{8}$ to seizing officers and assistants. (Sec. 89.)

Where no fine, penalty or forfeiture is imposed, for breach or violation of Revenue Laws, fine not exceeding \$200 to be imposed. (Sec. 90.)

Actions for penalties may be prosecuted within three years after the commission of the offence. (Sec. 91.)

The Revenue Laws apply to Labrador. The Collector's vessel shall be deemed to be the Custom House at Labrador. (Sec. 94.)

Sec. 95 to 98 relate to Labrador, and are repetitions of former law.

Bonds for payment of duty shall form a prior claim on importer and sureties on his bond from the time of importer's insolvency until payment. (Sec. 99.)

Forfeiture of vessel shall include her tackle, apparel and furniture, and of goods includes packages. (Sec. 100.)

Penalty for smuggling—fine not exceeding \$200, nor less than \$20, or imprisonment not exceeding one year, or both in the discretion of the Court. (Sec. 101.)

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Customs.

purchasing smuggled goods, forfeit double the value of the goods and the goods also. (Sec. 102.)

Five or more persons found together, any of them having smuggled good in possession, all of them having knowledge thereof liable to a fine of \$50, or in default 12 months imprisonment. (Sec. 103.)

Any person hiring or directing persons to assemble for landing or carrying away of smuggled goods shall, for every person hired, forfeit \$100. (Sec. 104.)

Person carrying away goods, &c., seized or detained on suspicion as forfeited under this chapter, shall be deemed to have stolen the goods, &c., being the property of Her Majesty, and to be guilty of felony. (Sec. 105.)

Books, pictures, models, &c., of an immoral or indecent character, not to be imported; if imported shall be forfeited and destroyed, penalty \$100. (Sec. 106.)

Officer wilfully neglecting to prevent smuggling; punishment, dismissal and fine : \$200. (Sec. 107.)

Owners of steamships must provide a suitable luggage room to be approved of by Receiver General. (Sec. 108.)

Sec 109.—If any goods imported into this Colony or its dependencies, at any other place than some port or place of entry where a Custom House is then lawfully established, are carried past such Custom House, or removed from the place appointed for the examination of such goods by the proper officer of the Customs at such port or place, before the same have been examined by the proper officer, and all duties thereon paid, and a permit given accordingly; or, if any

Customs.

vessel with dutiable goods on board enters any place other than a port of entry, (unless from stress of weather or other unavoidable cause,) such goods (except those of an innocent owner) shall be forfeited, together with the vessel in which the same were imported, if such vessel is of less value than eight hundred dollars; and if such vessel is worth more than that sum, it may be seized, and the master or person in charge thereof shall incur a penalty of eight hundred dollars, and the vessel may be detained until such penalty be paid, or security given for the payment thereof; and unless payment be made or satisfactory security given within thirty days, such vessel may, at the expiration thereof, be sold to pay the penalty.

Section 109 is a very important provision and gives the officer great power to prevent smuggling. On small and remote harbors; the actual presence of a vessel in any such port, (not a port of entry) unless from stress of weather or such an unavoidable cause as to repair damage, &c., renders the vessel *prima facie* liable to be seized. Of course any officer who knows his duty, will endeavor to obtain evidence that smuggled goods have been sold or landed from the vessel, and he should, if it is thus not obtainable, get general evidence about the character of the master, his antecedents in the smuggling business, &c. After seizing a vessel, the officer should take every precaution to secure her, mindful of the "Girardin" case. I would advise putting at least two men, night and day, as watchman, unending the sails, at any rate the mainsail, or unshipping the rudder and generally take every precaution to prevent the vessel being carried off. Of course where there is a chance of security being promptly given, these precautions will be unnecessary: every assistance

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I be given to the master to obtain such security, and where the Receiver General can be communicated with, he will probably manage it, when once word comes from the Receiver General that security has been given, the vessel should be at once released.

Master or owner must supply tide waiter with suitable board, maintenance, and accommodation, under a penalty not exceeding \$100, or in default, one month imprisonment or both; and unless paid, vessel may be detained and sold after 30 days to satisfy same. (Sec. 110.)

Postmaster General and his officers authorized to detain all mail matter suspected to contain smuggled goods; letter or mail matter to be opened in presence of addressee and Custom House officer. Smuggled goods may be detained for prosecution and forfeiture. (Sec. 111.)

A Custom House officer or his assistant may search persons whom he has reasonable cause to suspect of smuggling. Obstructing or assisting in obstructing search, penalty \$100. Person suspected may be questioned by officer about goods on his person, and if he does not produce such as he may have or denies having any, and smuggled goods are found on his person, the goods shall be forfeited and fine of double value thereof. Person before being searched may require officer to take him before a Justice of the Peace or before the Collector or chief officer of Customs, who shall, if he see no reasonable cause for search discharge him, but if otherwise, he shall order his person to be searched; females shall only be searched by a woman. Officer when required must take persons promptly before such Justice, &c. Penalty for

Customs.

searching persons without reasonable cause, fine not exceeding \$40. (Sec. 112.)

All breaches of the law respecting light dues, may be tried summarily before a Stipendiary Magistrate and offender be fined on conviction not exceeding \$200; in default, imprisonment not exceeding six months. In case of conviction, vessel owned or commanded by offender, may be detained until payment, and 30 days after conviction may be sold, proceeds applied to payment of fine and costs, balance returned to owner. (Sec. 115.)

All offences against Revenue Laws may be prosecuted before Admiralty Court, or upon information and without a jury in Supreme Court, or before a Justice of the Peace, who can inflict fines up to \$200 and give 6 months imprisonment. In the Supreme Court, either party may demand a jury as in ordinary cases of felony and misdemeanor. (Sec. 114.)

Appeal to the Supreme Court on conviction by Magistrate, by giving notice four days after judgment, and if required by Magistrate, recognizance with or without sureties to abide by judgment of Supreme Court. (Sec. 115.)

QUARANTINE.—In the Outports Custom House Officers, with the assistance of the Magistrate and police, have to carry out the Quarantine Regulations.

CATTLE DISEASE.—Also regulations to prevent the introduction of cattle disease.

GUN-POWDER.—They must strictly enforce the law relative to the storage and landing of gun-powder. [See *Gun-powder*.]

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KEROSENE OIL and other inflammable oils. There are very strict regulations about the landing and storage of these dangerous articles. The police should be informed of any infraction of the law, and in their absence the officer should make a complaint before the nearest Stipendiary Magistrate. Tank ships (vessels with oil in tanks) should not be allowed to come to a wharf without special permission and special precautions. The law on these subjects will be found under the various titles,—*Public Health, Cattle Disease, Gun-powder, Oils—Inflammable.*

DAMAGES.—This subject is treated concisely under the title *Evidence* as regards civil cases, and under the title *Injury* in criminal proceedings.

DEER—PRESERVATION OF.

This valuable measure, for the protection of our noble caribou, was introduced in 1889 (52 Vic., cap. 11), and amended by 53 Vic., cap. 10, (1890), and also by 54 Vic., cap. 13, (1891). These Acts have been since altered by Acts of 1896 and 1897. The former wholly repeals the Act of 1889, and parts of the Acts of 1890 and 1891. The Act of 1897 makes the close season from February 1st to 15th July; and again from 7th October to 20th October; the object of this latter close time was to prevent deer being killed in the rutting season. The poor settler's section is now eliminated, also the privilege given to Government surveyors to kill deer for food. I think the license fee is placed too high. If proper provision was made for the slaughter of the murderous lynx, that now destroys the young deer, the caribou could take care of themselves; whilst their range extends over such a vast territory they can never be destroyed.

1. No person shall hunt, kill or pursue with intent to kill, any moose or elk, within this Colony, at any time from the first day of January, 1896, to the first day of January, 1906.

2. If, within the time specified in the foregoing section, any person shall have in his possession the carcase of any moose or elk or any part thereof, such possession shall be *prima facie* evidence of his having violated the foregoing section.

3. Any person violating the first section of this Act

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Deer—Preservation of.

shall be liable to a penalty not exceeding two hundred dollars, and, in default of payment, to imprisonment for any period not exceeding three months.

4. No person shall hunt, kill, or pursue with intent to kill, any caribou from the first day of February till the fifteenth day of July, both days inclusive; or from the seventh day of October till the twentieth day of October in any year. No person shall expose for sale, or have in his possession, any part of the carcass of a caribou from the twentieth day of February till the fifteenth day of July in any year.

5. No person, not actually domiciled in this Colony, shall hunt, kill, or pursue with intent to kill, in any season, any caribou, without having first procured a license for the season, and shall pay for such license a fee of one hundred dollars: Provided, nevertheless, that no officer of any British warship, stationed on the coast of this Island for fisheries protection, shall be compelled to procure or pay for such license.

6. The license, required by the preceding section, may be issued by a stipendiary Magistrate or a Justice of the Peace. The person procuring the said license shall pay therefor a fee of one dollar and make oath or affirmation that he will not take or kill for the season for which the license is issued in manner provided by this Act, a greater number than three stag and two doe caribou, and that he will use his best endeavors to have the carcass or flesh of any caribou he may kill carried out of the woods or interior of the country into some town or settlement within ten days after the caribou shall have been killed; and

Deer—Preservation of.

that he will duly enter for exportation at the Custom House any caribou heads, antlers, skins, or other parts of the caribou which he may lawfully export.

7. No person shall export the carcass, or the head, antlers, skin, or other part of any caribou without first entering the same at some Custom House for exportation. Such person shall make oath or affirmation specifying the weight of the said carcass and the number and quantity of said heads, antlers, skins, or other parts of caribou aforesaid being so exported, and the manner in which the same have been obtained, and that the same are not being exported as an article of commerce, and shall also make oath or affirmation of the number of caribou he has, or any party he shall have been with have, killed or taken in the course of the season, and shall thereupon pay a fee to the officer of one dollar. No carcass, nor the heads, antlers, skins, nor other part of caribou, shall be exported unless accompanied by the owner, nor shall any person export more than one carcass of caribou.

8. Any person knowingly or wilfully making a false oath, or false affirmation under the next preceding section shall, in addition to any other penalty to which he may be subject under this Act, be deemed guilty of wilful and corrupt perjury.

9. The holder of a license shall produce the same when requested to do so by any person, and upon his refusal or neglect to comply with the said request, he shall be liable to a penalty not exceeding twenty-five dollars.

10. No person shall, during the time by this Act allowed

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Deer—Preservation of.

for killing caribou, in any one season, kill or take more than three stag and two doe caribou, and no number of persons forming a hunting party of three or more shall in any one season kill more than two stag and one doe caribou for each member of said hunting party, exclusive of guides.

11. No person shall set, or attempt to set, any snare, or trap, or pit, for the destruction of caribou, under a penalty of not less than twenty-five nor more than fifty dollars for each offence, and the finder of any such snare or trap may destroy the same. The possession of any such snare or trap shall be presumptive evidence of the attempt of the person in whose possession it is found, to set the same for the destruction of caribou.

12. Any person who shall hereafter hunt, chase, wound, kill, or pursue with intent to kill, any caribou—

(1). With dogs; or,

(2). With hatchet, tomahawk, spear, machine, contrivance, or weapon other than fire-arms;

shall be liable to a fine of twenty-five dollars, in addition to any penalties to which he may be otherwise liable under this Act, to be recovered in a summary manner before a stipendiary Magistrate or Justice of the Peace by any person who shall prosecute the offender to conviction.

13. Any person who shall violate the 4th, 5th, 7th or 10th section of this Act shall be liable to a penalty not exceeding four hundred dollars, and, in default of payment, to imprisonment for any period not exceeding six calendar months: Provided that where a fine of forty dollars or upwards, or a term of imprisonment of one month or more is

imposed, such person may, within one week after judgment, appeal to the Supreme Court in St. John's or on Circuit, upon giving satisfactory security for the prosecution of such appeal: Provided further, that if, upon the trial of any person charged with violating the 4th section of this Act, it shall appear that such person has *bona fide* killed any caribou for the (the word "immediate" stricken out by 60 Vic., cap. 8, sec. 2), use for food of himself and family, he shall not be deemed guilty of an offence against this Act.

14. Any person who shall be convicted of any violation of the provisions of this Act shall thereafter be incapable of receiving a license under this Act.

15. Whenever any person shall make affidavit before a stipendiary Magistrate or before a Justice of the Peace, that he has reason to suspect and does suspect that the hide or any portion of the carcass of a caribou, killed during any close season, is concealed on the premises of any person, it shall be lawful for such stipendiary Magistrate or Justice to cause a warrant to be issued, authorizing the person to whom it is addressed to search such suspected premises and seize and take any such hide or portion of the carcass of a caribou found therein, before such stipendiary Magistrate or Justice, to be dealt with according to law, and the said Magistrate or Justice shall have power to confiscate the same.

16. It shall be the duty of the Magistrate or Justice before whom a prosecution takes place, to send caribou meat when seized and confiscated under the provisions of this Act, to the Commissioner of the Poor or the Reliev-

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Deer—Preservation of.

ing Officer for the use of the poor. The skin and horns, when confiscated, shall be sold by the said Magistrate or Justice, and the proceeds shall be paid to the Receiver General for the use of the Colony.

17. All fines and penalties under this Act, except where otherwise provided, shall be sued and recovered in a summary manner on information or complaint before a Justice of the Peace, by any person who shall inform and sue for the same; and one-half of all fines, penalties and forfeitures imposed under this Act, except as aforesaid, shall be awarded and paid to such complainant who shall prosecute the offender to conviction, in addition to all costs and expenses consequent upon such information or complaint and prosecution, and the said Justice of the Peace shall have power to award the same, and the other half shall be paid to the Receiver General for the use of the Colony.

18. Any Magistrate or Justice of the Peace, who shall grant licenses under the provisions of this Act, shall, upon the thirty-first day of December in each year, make a return to the Colonial Secretary, specifying—

- (1). The number of licenses issued by him during the year;
 - (2). The name of licensees;
 - (3). The amount of fees collected;
 - (4). The number of complaints made for a breach of this Act;
 - (5). The names of complainant and accused, and the manner in which each complaint has been disposed of;
- and he may give all such further information as he may

Deer—Preservation of.

deem necessary for carrying into operation the provisions of this Act.

19. The term "close season" in this Act means the time in any year within which the hunting, taking, or killing of any caribou is by this Act prohibited, and the term "season" means the time within which such hunting, taking, or killing is by this Act allowed.

20. The Acts mentioned in Schedule 4 of this Act are hereby repealed to the extent mentioned in the third column of that Schedule, but such repeal shall not affect—

(a). Any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(b). The institution or continuance of any proceeding, or other remedy under any enactment so repealed for the recovery of any penalty incurred, or for the punishment of any offence committed, before the commencement of this Act.

21. Any person who shall scaffold the carcass of any caribou, and shall allow it to remain upon such scaffold for a period exceeding twenty days from date of its being killed, shall be liable to a fine of twenty-five dollars, to be recovered in the manner provided in section 17.

22. This Act may be cited as "The Deer Preservation Act, 1896."

SCHEDULE 1.

FORM OF LICENSE.

In consideration of the payment of One hundred dollars by _____, of _____, the receipt whereof is here-

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Deer—Preservation of.

by acknowledged, and of his having taken the oath prescribed by section six of the "Deer Preservation Act, 1896," permission is hereby given to the said to kill three stag and two doe caribou in this colony, under and subject to the provisions of "The Deer Preservation Act, 1896," and any Acts in amendment thereof.

Dated at _____, this _____ day of _____, 18 ____.
J. P.

SCHEDULE 2.

The information of _____, in the Island of Newfoundland, who saith that he hath reason to suspect and doth suspect that (here state the offence against the Act, such as "the meat of caribou is concealed in the premises or property of A. B., of C., in the district of D., and that such caribou was killed in close season in the district of D. by E. F., of C., aforesaid"), and (here state the cause of suspicion).

Wherefore he prays that a search warrant may be granted to search such premises or property for the same.

Sworn (or affirmed) before me, this _____ day of _____, A. D. 18 ____, at _____
J. P.

SCHEDULE 3.

SEARCH WARRANT.

NEWFOUNDLAND, }
District of _____

To all or any of the Constables in the District of

Whereas _____, of _____, in the district of _____, has this day made oath (or affirmation) before me, the undersigned, that he hath reason to suspect and doth suspect (here state the offence, *see Schedule 2.*)

Deer—Preservation of.

These are, therefore, to require you, in Her Majesty's name, with proper assistance, diligently to search such premises or property in the day time for the said , and if you shall find the same, or any part thereof, you bring the same before me, or some other Justice of the Peace or stipendiary Magistrate, to be dealt with according to law.

Given under my hand and seal at , in the district of , this day of , A. D. 18 J. P.

SCHEDULE 4.

SECTION AND CHAPTER.	TITLE OR SHORT TITLE.	EXTENT OF REPEAL.
52 Vic., Cap. 11	An Act to provide for the Preservation of Deer.	The whole Act.
53 Vic., Cap. 10	An Act to amend the Act 49th Vic., cap. 9, entitled "An Act for the Preservation of Game," and the Act 52nd Vic., cap. 11, entitled "An Act for the Preservation of Deer."	Section 3.
54 Vic., Cap. 13	An Act to amend the Laws relating to the Preservation of Game and Deer, and also to amend the Law relating to Inland Fisheries.	Section 1.

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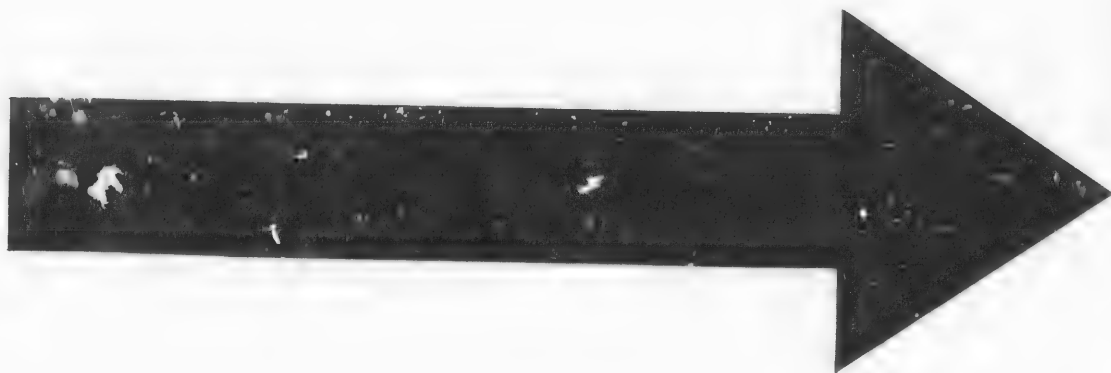
DESERTED WIVES AND CHILDREN.

1.—Whenever a complaint on oath shall be made by a Commissioner of the Poor, or any other person, before any Stipendiary Justice, (a) that any husband has left destitute, abandoned, or deserted, or is about to leave destitute, abandon or desert his wife; that any parent has left destitute, abandoned or deserted, or is about to leave destitute, abandon or desert his infant (b) child; or that any child has left destitute, abandoned or deserted, or is about to leave destitute, abandon or desert his aged or infirm parent, the person so left destitute, abandoned or deserted, or about to be left destitute, abandoned or deserted, being destitute of the means of support, and likely to become a burden on the Colony, (c) and the party so leaving destitute, abandoning or deserting, or about to leave destitute, abandon or desert, having the means

(a) An Honorary Magistrate in the absence, &c., of the Stipendiary Magistrate could act.

(b) The term infant here means a person under Twenty-one years of age.

(c) The object of this Act is to make people who can afford to do so, support their poor relations, and the Magistrate, whether he acts solely as a Justice of the Peace or as Poor Commissioner, should do all in his power to prevent the Colony from being burthened with the support of paupers whose relations can be compelled under this Act to support them. The relations mentioned in the chapter are the only ones who can be so compelled by this Law.



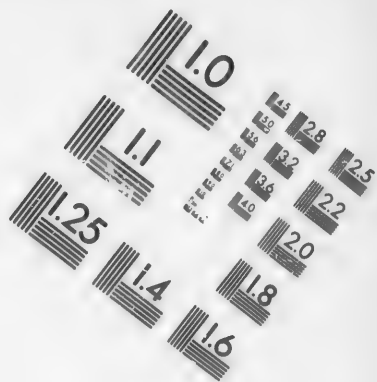
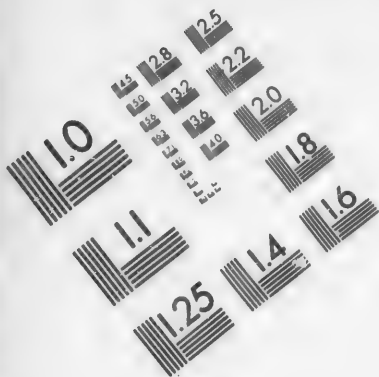
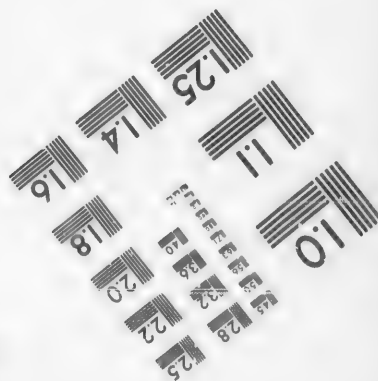
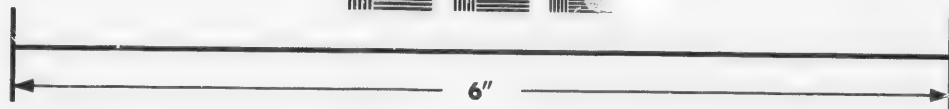
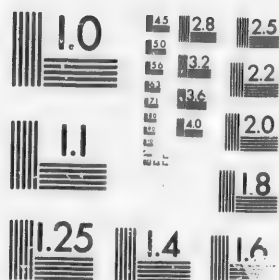


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Deserted Wives and Children.

or ability to maintain such wife, child or parent, aforesaid, such Justice may, by summons or by warrant, cause the party so charged to be brought before him, and thereupon, if upon inquiry such complaint shall be sustained, such Justice may require the party charged as aforesaid to give security by bond to the Stipendiary Commissioner of the Poor at St. John's, and his successors in office, for the support and maintenance of the person in relation to whom the charge is made; and in default of such order being forthwith obeyed, may sentence the party charged to imprisonment, with or without hard labor, for any period not exceeding thirty days: Provided that if after committal the party charged shall give such security, he shall be forthwith discharged; and every subsequent month's abandonment or desertion as aforesaid, shall be deemed a repetition of the first offence.

2.—In any case where, upon any such complaint, it shall be made to appear upon such inquiry, and whether the party charged shall have been brought before such Justice or not, (a) that the party charged has any property or money within the jurisdiction of the said Justice, or that he is in the receipt of any salary, allowance, pension or wages, such Justice may, if such order aforesaid be disobeyed, or cannot be made by reason of the party charged not being brought

(a) This second section gives the Justice authority to make an order *whether the party charged shall have been brought before such Justice or not*; in the first section the party charged should be brought before the Justice, and there must be an enquiry held by him in presence of the party charged before the Justice can make an order. The proceedings under 1st section should be conducted in the manner prescribed in Chap 13, Summary Conviction, and the Forms No. 13, &c., will be applicable. Forms to suit Sec. No. 2 are special, and I have given them at the end of the Chapter.

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Deserted Wives and Children.

before such Justice, make an order directing the appropriation of so much of such money or property as may be necessary, or the payment of a reasonable proportion of such salary, allowance, pension or wages, towards the maintenance and support, from time to time, of the party the subject of such order; and such order shall be binding and obligatory upon all persons having notice thereof; and every employer or other person having the payment of such money, salary, allowance, pension or wages, shall conform to and obey the same, and in default of conformity and obedience thereto, may be compelled to pay the amount from time to time payable thereunder, with costs, in an action of debt to be brought and determined in a summary manner, in the name of the Stipendiary Poor Commissioner at St. John's, before any Stipendiary Justice.

3.—The Justice may, for the purpose of such inquiry, compel the appearance by summons, and if necessary by warrant, of any third person, and examine such person upon oath as to any such money, property, allowance, pension or wages aforesaid.

4.—The term "parent" in the preceding sections shall include a grand-parent, and the term "child" a grand-child.

5.—Upon complaint upon oath being made before any Stipendiary Justice that any husband or father having property is by habits of drunkenness dissipating his property, so as to expose his wife or children to the danger of destitution, such Justice may summon such husband or father before him, and inquire into the matter of such complaint, and if upon enquiry the same shall appear to be well founded, may make an order requiring such husband or father to give

Deserted Wives and Children.

security to the Stipendiary Commissioner of the Poor at St. John's, and his successors in office, for the maintenance of his family, and in default of such order being obeyed, may commit the offender to prison until he shall conform to such order or be discharged by due course of law. And the said Justice, where such security as aforesaid shall not be given, may, in lieu of committing such offender to prison, order that so much of the property of such offender as may be necessary be taken and applied to the maintenance of his family; and such last-mentioned order shall be carried into effect under the direction of the Stipendiary Poor Commissioner, and shall be a justification in law for his proceedings thereunder; and the provisions of the second and third sections of this chapter shall be applicable to the object of this section. (a)

6.—Every such order made by a Stipendiary Justice, affecting landed property, shall be registered in the Registry of Deeds for the District where such land may be situated; and, from the time of such order being deposited for registration, shall have the effect of a conveyance of such land by the owner thereof, for the purposes of such order: Provided that any Stipendiary Justice of the District aforesaid may rescind any such order upon receiving such security as to him may appear sufficient, and also in cases in which it may not be deemed necessary longer to continue the operation of such order. (b)

(a) By the latter part of this section it would appear that an order may be made though the party charged was not before the Justice. However, his presence should always be procured if possible.

(b) An order to sell land might be made in the following form, after reciting the complaint that the husband or father is dissipating his property, &c., I, the said Justice, by virtue of the power vested in me under the 5th section of Chapter 108,

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Deserted Wives and Children.

7.—All deeds, assignments and conveyances of any lands or other property made, done or executed with the intent and purpose of defeating any attachment made in pursuance of this chapter, shall be, and the same are hereby declared void, except in the case of a *bona fide* purchaser or grantee, for a valuable consideration, who shall not have been aware of or a party to such intent and purpose.

8.—FORM OF COMPLAINT.—

Northern District, }
Island Cove, }
 to wit: }

NEWFOUNDLAND.

The complaint, on oath, of Ann Giles, wife of Job Giles, of Island Cove, fisherman, who saith,—“My husband, Job Giles, has abandoned and deserted me, and left me and my children destitute of the means of support, and I am likely to become a burthen upon the Colony (*or I am now receiving poor relief.*) I am the mother of children by the said Job Giles; the eldest child a boy [*or a girl*] is years of age, the youngest is years. My said husband has dollars due to him by John Smith, planter, of Island Cove, for wages, [*or has fish or has rent, &c., as in order*] and I pray that an order may be issued to stop the said money in the hands of John Smith, and to have the sum appropriated towards the support of myself and my children.”

Sworn, &c.

FORM OF ORDER UNDER SECTION 2.—

Northern District, }
Island Cove, }
 to wit: }

NEWFOUNDLAND.

Whereas on the day of last, complaint, on oath, was made before me, the undersigned Stipendiary Justice of the

Consolidated Statutes of Newfoundland, do order and direct that the land, with the dwelling house thereon, (*the property of the father or husband,*) situate at , bounded as follows, belonging to be sold, and that out of the proceeds of such sale, dollars be appropriated towards the maintenance and support of (*wife or child*) under the direction of the Stipendiary Poor Commissioner at .

Deserted Wives and Children.

Peace for the said district, by Ann Giles, wife of Job Giles, of Island Cove, aforesaid, fisherman, that the said Job Giles had deserted and abandoned her and her children, and that she was left destitute of the means of support and likely to become a burthen upon the colony. [*If receiving poor relief say, and has become a burthen upon the Colony.*] And whereas, I issued my warrant upon the said complaint for the apprehension of the said Job Giles, but the said Job Giles has not been arrested or brought before me, and I am therefore unable to obtain security from the said Job Giles for the support of his family, pursuant to the first section of chapter 108 of the Consolidated Statutes of Newfoundland; and whereas it has been made to appear to me, upon oath, that the said Job Giles has certain monies in the hands of John Smith, planter, of Island Cove, [*or he has certain wages dues to him, Job Giles, by , or he, Job Giles, receives dollars rent for a certain piece piece of land with a dwelling house thereon, situate at , bounded, &c., as the case may be.*] Therefore, by virtue of the power vested in me under the second section of the said chapter, I order and direct the said John Smith to pay over [*to the Clerk of the Peace at , or, to the Stipendiary Commissioner of the Poor, if there be one in the place, or if neither, then say, to , the constable who bringeth this order*] the sum of dollars, to be appropriated [*a*] towards the maintenance and support of the said Ann Giles and her children.

Witness my hand and seal, at Island Cove,
aforesaid, this day of , 189 .

T. WILLS, O

To Mr. John Smith, Planter,
Island Cove.

Stipendiary Magistrate.

[*a*] The Poor Commissioner or Magistrate will appropriate the money towards the support of the wife and family in the manner most beneficial to them. John Smith should be summoned or arrested if he will not attend or pay over the money.

DESTRUCTIVE INSECTS---COLORADO BEETLE.

1.—The Governor in Council may, from time to time, make such orders as may be deemed expedient for preventing the introduction into this Colony of the insect designated as *Doryphora Decemlineata* or *Chrysomela Decemlineata*, and commonly called the Colorado Beetle. Any such order, if the Governor shall think fit, may prohibit or regulate the landing in this Colony of potatoes, or of the stalks or leaves of potatoes, or other vegetable substance or other article the landing whereof may appear to the Governor likely to introduce the said insect into this Colony, and may direct or authorize the destruction of any article if landed. If any person lands or attempts to land any article in contravention of any order under this Chapter, such article shall be liable to be forfeited in like manner as goods, the importation whereof is prohibited by the Acts relating to the Customs, are liable to be forfeited; and the person so offending shall be liable to a penalty not exceeding one hundred dollars.

2.—The Governor in Council may, from time to time, make such orders as may be deemed expedient for preventing the spreading in this Colony of the insect. Any such order may, if the Governor in Council shall think fit, direct or authorize the removal or destruction of any crop of potatoes or other crop or substance on which the said insect, in

Destructive Insects—Disorderly Persons.

any stage of existence, is found, or to or by means of which the said insect may appear to the Governor in Council likely to spread, and the entering on any lands for the purpose of such removal or destruction, or for the purpose of any examination or enquiry authorized by such order, or for any other purpose of the order. Any such order may, if the Governor in Council think fit, prohibit the keeping, selling or exposing, or offering for sale, or the keeping of living specimens of the said insect in any stage of existence, or the distribution in any manner of such specimens. Any person committing any offence against or acting in contravention of such order, shall incur a penalty not exceeding one hundred dollars.

3.—Every order made under this Chapter shall be published in the *Royal Gazette*.

4.—Penalties imposed by this Chapter may be recovered in a summary manner with costs, before a Stipendiary Magistrate, and by distress and sale of the offender's goods and chattels. In default of payment of such penalties and costs, the offender may be committed to prison for a period not exceeding three months.

DISORDERLY PERSONS.—Any Stipendiary Magistrate may condemn all loose and disorderly persons convicted before him, on his own view, or by their own confession, or on the oath of one or more credible witnesses, to pay immediately, or within such period of time as he thinks fit, a fine not exceeding twenty dollars or in default of payment, imprisonment not exceeding three months.

Persons openly exposing or exhibiting in any street, road, public place or highway any indecent exhibition, or

Distress—Dogs—Drunkness—Dying Declaration.

openly or indecently exposing their persons; persons loitering in the streets or highways and obstructing passengers, using any lewd or insulting language, or in any other way annoying passengers, tearing down or defacing signs, breaking windows, breaking doors or door-plates or knockers, or the walls of houses, yards or gardens, destroying fences, causing a disturbance or noise in the streets or highways, by screaming or shouting; also all common prostitutes or night-walkers, wandering in the fields, public streets or highways, not giving a satisfactory account of themselves shall be deemed loose and disorderly persons, within the meaning of this Chapter, and shall be subject to the penalty not exceeding \$20, or in default, imprisonment not exceeding three months.

DISTRESS.—See page 26, how to carry out an execution on an judgment.

DOGS.—See *Agricultural Acts*, and Protection of sheep from dogs.

DRUNKENNESS.—Any person found drunk on the streets or public highways, may on conviction, be fined not exceeding one dollar, or in default, three days imprisonment for the first offence, for a second offence two dollars or six days, and for a third or subsequent offence, five dollars or seven days in jail.

DYING DECLARATION.—Any statement made by a dying person touching the infliction of the injury of which he is dying, may be given in evidence at any subsequent trial or inquiry in relation to the cause of death, but it must appear that he was not only aware of his danger, but without hope of recovery, under such circumstances the law presumes that the moral inducement to speak the truth will be sufficiently powerful without the additional obligation of an oath, A

Dying Declaration in Murder or Manslaughter—Form of.

dying declaration is admitted in evidence because it is presumed that no person who is immediately going into the presence of his Maker will do so with a lie on his lips. (Wigrane.)

FORM OF DYING DECLARATION IN MURDER OR MANSLAUGHTER.—

No particular form is necessary, but it may be as well to state its principal ingredients, in order to its admissibility in evidence against the prisoner; it should only be taken when the Declarant is in imminent danger of death, and when he might expire at any moment. Whenever there is time, and there is a suitable opportunity for doing so, the prisoner should be brought into the injured man's presence, and the depositions taken by the Justice in the usual way. When a dying declaration is taken the three following points are necessary:—

1.—The cause of the death of the declarant must be the subject of inquiry.

2.—The circumstances which caused, or is about to cause the death of the declarant, the subject of the declaration.

3.—It must appear to have been made at a time when the declarant (the deceased) was perfectly aware of his danger, and entertained no hope of recovery.

The declaration must not be on *oath*, but might be taken somewhat in this form.

District,)
to wit.)

NEWFOUNDLAND.

I, A. B., of , in the said District, Fisherman, being aware that my end is approaching, and entertaining no hope of recovery, do hereby solemnly and sincerely declare, that [here set out the statement in the very words used]. (It is well, if possible, to get the injured man to sign it, if he is able, and in all such cases it is advisable to have some one present besides the Magistrate to hear and confirm the injured man's statement.)

Taken before me, at , in the said District,)
this day of , 189 . (a)

T. WILLS, J. P. for the said District.

DYNAMITE---STORING OF.

1.—No person shall have, in any house, or on any wharf, or premises, owned, occupied, or used by him, in any town or settlement in this Colony, or within one-half a mile of any such town or settlement, any dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, except in pursuance of a license, to be granted by a Stipendiary Magistrate.

2.—The licenses provided for in the first Section may be granted for a limited time, and subject to such conditions as may, by such Stipendiary Magistrate, be deemed necessary for the purpose of preventing or diminishing the risk of damage from explosion.

3.—The Governor in Council shall, upon the application of any person holding or applying for any such license, have the power to alter or modify the terms or conditions of such license, as imposed, or proposed so to be, by the Magistrate granting the same.

4.—Any person holding any such license, who shall be guilty of a violation of any of the terms or conditions thereof, shall be liable to the same proceedings, forfeitures, and penalties, as are provided by Sections ten and twelve of this Chapter.

Dynamite—Storing of.

5.—No dynamite, nitro-glycerine, gun-cotton, or other such explosive substances, shall be kept in any ship or vessel in the harbor of any town or settlement in this Colony, longer than twenty-four hours after the arrival of such ship or vessel: Provided that, in case of trans-shipment, such further time may be allowed as any Stipendiary Justice of the Peace may, on application, deem reasonable and direct. Any vessel obtaining the special privilege aforesaid, shall, for such further time, remain anchored, moored, or stationed, not less than fifty fathoms distant from any wharf or other building: Provided that this Chapter shall not extend to any ship or vessel of war belonging to her Majesty, or to any foreign country or state, or vessel employed in the service of the Government of this Colony.

6.—Nothing in this Chapter shall be construed to prevent any person from landing upon or receiving at his waterside premises, or those of others, any such dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, provided the same be forthwith removed to a place at a distance of more than one-half of a mile from any such town or settlement.

7.—The limits of the town of St. John's shall for the purposes of this Act, be as prescribed in Title Chapter of these Consolidated Statutes, entitled "Rebuilding of St. John's."

8.—The town of Harbor Grace, for the purposes of this Chapter, shall extend from Bear's Cove to Ship's Head, inclusive, and one-half of a mile from high water mark, within the limits aforesaid.

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Dynamite--Storing of.

9.--The town of Carbonear, for the purposes of this Chapter, shall be included within a line extending from Crocker's Cove Point to Mosquito Point, including all buildings erected within one-half of a mile of high water mark on the northern and western sides, and within one-quarter of a mile of the southern side of the said Harbor of Carbonear.

10.--Any Magistrate or Justice, on complaint made on oath by any person, that has reasonable cause to suspect that dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, is deposited in any house, or on any wharf, or premises, within any of the towns or settlements in this Colony, or the limits aforesaid, or on board any ship in any of the said harbors, may, provided such house, wharf, premises, or ship be within the limits of his jurisdiction, issue his warrant to a police officer, or constable, to search for the same in the day time, and, for that purpose, admittance being first demanded by such police officer, or constable, and refused by the proprietor, or occupant, of any such house, wharf, or premises, or by the master, or other person in charge of any ship in the harbors aforesaid, wherein it is suspected that dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, is unlawfully deposited, such police officer, or constable may, if there shall be occasion, break open any such house, or into, or upon any such wharf, or premises, or any such ship or vessel, and search the same; and if upon any search any dynamite, nitro-glycerine, gun-cotton, or other such explosive substance shall be found, such police officer, or constable, shall seize the same, and shall, without delay, remove the articles or substance so seized and deposit the same in a place to be appointed by such Magistrate or Justice, and without delay then give information and make

Dynamite—Storing of.

complaint of such seizure before a Magistrate or Justice, who shall thereupon summon the owner of such dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, so seized, or the person in whose house, or in whose ship, or upon whose wharf, or premises, or in whose keeping the said dynamite, nitro-glycerine, gun-cotton, or other such explosive substance was found, requiring the said party to appear and defend the said information or complaint, which shall, by the said Magistrate or Justice, be heard and determined in a summary way, and if the person so summoned shall make default in appearance, or, after appearance and hearing, the said Magistrate or Justice shall convict the defendant, he shall make order for the confiscation and sale of the said dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, and after payment of such reasonable costs as the said Magistrate or Justice shall award to be paid out of the proceeds of the sale, one-half of the net residue of the proceeds shall be paid to the informer, and the other half to the Receiver General for the use of the Colony.

11.—No dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, shall be shipped or carried in or on board of any steamer or other vessel carrying passengers from any part of this Colony to any other part thereof, under contract with the Government for the carriage of such passengers.

12.—In addition to the penalties and forfeitures provided by the tenth section of this Chapter, any person guilty of a wilful violation of any of the provisions of this Chapter, shall be liable for the first offence to a fine not exceeding twenty-five dollars, or imprisonment for a term not exceeding one month; for the second offence to a fine not exceeding fifty

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Dynamite—Storing of.

dollars, or imprisonment for a term not exceeding two months; and for the third or any subsequent offence, to a fine not exceeding two hundred dollars, or imprisonment for a term not exceeding four months.

13.—All dynamite, nitro-glycerine, gun-cotton, or other such explosive substance, removed from one part of the Colony to another part thereof or from one place to another in any town or settlement therein, shall at all times be conveyed and carried by water, as far as the same can be conveniently water-borne; and any person wilfully offending against the provisions of this section shall, upon conviction before a Magistrate or Justice, forfeit and pay for the first offence the sum of twenty dollars; for the second offence fifty dollars; and for every subsequent offence, one hundred and fifty dollars.

14.—The fines and imprisonment provided for in the twelfth and thirteenth sections of this Chapter shall be recovered before, and imposed by, any Magistrate or Justice of the Peace in a summary manner.

15.—The provisions of this Chapter shall not extend or be applied to the storing, warehousing, or keeping of any dynamite, nitro-glycerine, gun-cotton, or other explosive substance, being the property of Her Majesty, in any of Her Majesty's storehouses, warehouses, depôts, or magazines, in this Colony.

16.—The term "House," in this Chapter, shall include torchouse, warehouse, shop, cellar, yard, or any building whatsoever; and all buildings and places adjoining each other, and occupied together, shall be deemed to be one house or place.

Dynamite—Storing of.

17.—Nothing in this Chapter contained shall be construed to apply to, or in any way affect, Title , Chapter , of these Consolidated Statutes, entitled "Of Storing Gunpowder in the Towns of Saint John's, Harbor Grace or Carbonear," or Title , Chapter , of said Consolidated Statutes, entitled "Of the Storing of Kerosene, Parafine, Petroleum, Naphtha, and other Inflammable Oils."

18.—The limits of towns or settlements in this Colony, other than St. John's, Harbor Grace and Carbonear, may, for the purposes of this Chapter, be declared and regulated by the Governor, by Proclamation, to be published in the *Royal Gazette*.

EDUCATION.—This subject is too long and complicated for insertion here, full information will be found in the Consolidated Education Act.

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ELECTION LAW.

The following pages contain the Election Law of this Colony as now consolidated. The only additions are the Rules which are prescribed for each Election by the Governor in Council, a copy is given of the Rules for the General Election of this year, 1893.

(Under Cap. 3, of Consolidated Statutes, (Second Series), as amended by 53 Vic., Cap. 1, and 56 Vic., Cap 17.)

PART I.

PRELIMINARY.

1.—This Chapter may be cited as “The Election Act, 1889.”

2.—This Chapter is divided into parts, as follows :—

Part I.—Preliminary.

Part II.—Qualification and Registration of Electors.

Part III.—Elections of Members of the Legislative Assembly.

Part IV.—Corrupt and Illegal Practices.

Part V.—Trial of Controverted Elections,

Election Act.

3.—In this Chapter, unless the context otherwise requires—

- (a) The expression "person" means a male person.
- (b) The expression "Electoral District" means any place entitled to return a member or members to the General Assembly of Newfoundland.
- (c) The expression "Polling Station" means the place where polling is authorized by law to take place.
- (d) The expression "List of Electors" means the list of persons qualified by law to vote at the election of a member of the General Assembly of Newfoundland.
- (e) The expression "Voters' List" means the list kept by a Polling Clerk at an election.

PART II.

QUALIFICATION AND REGISTRATION OF ELECTORS.

Qualification.

4.—Every male British subject of the full age of twenty-one years, who for two years preceding the day of election has been resident in this Colony, and is of sound understanding, shall be competent to vote for the election of members of the House of Assembly in and for the Electoral District or division of a district, as the case may be, within which he is an actual and *bona fide* resident at the time of the preparation of the list of electors or supplementary list of electors, as the case may be: Provided that any person temporarily employed or staying in any district or division of a district, as the case may be, and intending at the termination of his employment

Election Act.

or stay to return to his home in another part of the Colony, shall not be deemed to be an actual or *bona fide* resident within the meaning of this section.

5.—No person who shall have received relief, as a pauper, from or out of the public moneys, at any time during the year immediately preceding any election of a member to serve in the Legislative Assembly, shall be competent to vote at such Election.

6.—The Judges of any Court now existing or hereafter created, whose appointment rests with the Governor, shall be disqualified and incompetent to vote at any election.

7.—Returning Officers and Election Clerks shall be disqualified and incompetent to vote at any Election for the Electoral District for which they hold office or position respectively, except that the Returning Officer, at any Election, may, as hereinafter provided, vote in the case of an equality of votes between candidates.

8.—Except as hereinafter provided as to Supplementary Lists, no person shall be entitled to vote at the election of any member to serve in the Legislative Assembly whose name shall not have been previously registered in the manner required by this Chapter.

Registration.

9.—At the Courts of General or Quarter Sessions of the Peace, to be held in the several Districts of this Island at such times and places as the Governor shall, by his Proclamation, appoint, the Justices at such Sessions shall, once in every four years, make out lists of all the inhabited places

Election Act.

within their respective Districts, and shall assign to each of such Justices within such District a particular division thereof, within which such Justices shall act in procuring and revising the lists required by this Chapter; and such Justices shall give orders or instructions in writing to such persons as they may appoint to make out alphabetical lists, according to the form of Schedule A to this Chapter, of all persons, entitled to vote at any election of a member of the Legislative Assembly, who reside at such places or within such limits as such Justices may, by such orders or instructions, assign to such persons respectively, and of all persons who shall claim to be inserted in such lists. Every person so appointed, before entering upon such duties, shall be sworn faithfully to perform the same before any Justice of the Peace.

10.—The Governor in Council may make all such rules and regulations as may be deemed necessary for the more efficient preparation and revision of the Lists of Electors provided for by this Chapter, and impose fines and penalties for the violation or non-observance thereof, and said rules and regulations, upon publication thereof in the *Royal Gazette*, shall have the force and effect of law.

11.—The persons appointed to prepare the lists shall cause copies thereof to be fixed on the Court House or near the doors of all Churches, or other places of public worship within their respective limits; or if there be no such Court House, Church, or place of public worship, then on some public place within such limits, and shall also affix thereto a notice according to the form of Schedule B to this Chapter, requiring all persons whose names are not included in such lists, and who may consider themselves entitled to vote at such election, to deliver or transmit to the said persons by

Election Law.

whom such lists have been respectively prepared, on or before the time mentioned in such notice, a notice of their claim as such electors, according to the form of Schedule C, or to that effect.

12.—The persons appointed as aforesaid shall, to the best of their knowledge and information, insert the names of all qualified persons into such lists, and deliver and duly make return of all such lists to the Justices, by whose directions such persons have acted in making out such lists.

13.—The said Justices shall have power at any time before the holding of the Courts of Revision, provided for by the said Chapter, to summon before them at any reasonable times all persons whomsoever who may be able or supposed to be able to give evidence or other information necessary for the correct preparation of the said lists, and to examine the said persons upon oath, and to require such persons to produce any books, registers, documents or papers in their possession and considered necessary for the said purpose, and any person refusing to attend upon any such summons or to give the evidence or information asked for or to produce any such book, register, document or paper, shall be liable to the same penalties as would apply in case of a similar refusal by a witness in an ordinary summary proceeding before a Justice.

14.—The Justices of each of the said districts shall, on or before the day appointed for that purpose by them, make out according to the form of Schedule E. to this Chapter, a general alphabetical list of all persons within the several divisions of their respective districts entitled to vote at such election, or who shall claim to be inserted in such list as electors in the election of a member for such district.

Election Law.

15.—The Justices, if they shall have reasonable cause to believe that any person so claiming, or whose name shall appear on the register for the time being, is not entitled to vote in the election of a member for the district in which his place of residence is stated to be situate, shall add the word "objected to" opposite the name of every such person on the margin of such list.

16.—The Justices, or one of them, in each respective division of the district, shall sign such list, and shall cause a sufficient number of copies thereof to be written or printed, and to be fixed on the court house or near to the doors of all the churches or other places of public worship therein; or if there be none such, then to be posted up in some public places therein.

17.—The Justices shall likewise keep a true copy of such list, to be perused by any person without payment of any fee, at all reasonable hours during the period of the sitting of their respective Courts of Revision, after the said list shall have been made.

18.—Every person who shall be upon the register for the time being of electors for any district, or any constable of the district or person appointed to prepare a list of electors, may object to any person as not having been entitled to have his name inserted in any list of electors for such district; and every person so objecting (save and except Justices objecting in the manner hereinbefore mentioned) shall, on or before the opening of the Court of Revision, give or cause to be given a notice in writing in the form of Schedule D to this Chapter, or the like effect, to the Justices who shall have made out the list in which the name of the person so objected to shall

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Election Law.

have been inserted; and the person so objecting shall also, on or before the said time, give to the person objected to or leave at his place of abode as described in such list, a note in writing according to the form of said Schedule D, or the like effect.

19.—On a day to be appointed and publicly notified by them, the Justices shall once in every four years, except as hereinafter mentioned, hold open Courts of Revision at the places within their respective divisions of districts, and such court shall be held by one or more Justices; and such Justices respectively shall there produce the several lists of electors so taken for that division of such district, and also a list of the persons objected to; and the persons who have made the several lists shall answer upon oath all such questions as the said Justices may put touching any matter necessary for revising the list of electors. And such Justices shall retain on the list of electors the names of all persons to whom no objection shall have been made in the manner hereinbefore mentioned, and shall also retain on the list of electors the name of every person who shall have been objected to, unless the party objecting shall appear by himself, or some one on his behalf, in support of such objection; and where the name of any party inserted in the list of electors shall have been objected to by any person, and such person so objecting shall appear by himself, or some one on his behalf, in support of such objection, every such Justice shall require it to be proved that the person so objected to was entitled on the opening of the said Court of Revision to have his name inserted in the list of electors; and in case the same shall not be proved to the satisfaction of such Justices, the name of such person shall be expunged from the list; and

Election Law.

if it shall happen that any person who shall have given to the said Justice, or the person who has prepared the list respectively, due notice of his claim to have his name inserted in the list of electors, shall have been omitted by such Justice or person from the said list, such Justice shall upon the revision of such list insert the name of the person so omitted, in case it shall be proved to the satisfaction of such Justice that such person gave due notice of his claim, and that he was entitled on the opening of the said Court of Revision to be inserted in the list of electors.

20.—After the formation of a revised list of electors, no person whose name shall be upon such list shall be required thereafter to make the claim prescribed in section nineteen, so long as he shall retain the qualification and continue in the place of abode described in such list.

21.—Any person who may have been absent from his usual dwelling place during the whole time when the list was posted up in such place, and whose name shall have been omitted from such list, may at any time before the closing of the Court of Revision, give notice to the revising Justice of his claim to be inserted in such list, and such revising Justice shall, if satisfied of his right to be inserted in such list, insert his name therein accordingly.

22.—The parties revising the list of electors shall strike therefrom the names of all persons disqualified as paupers under section five.

23.—All Justices holding any court under this Chapter shall have power to adjourn the same from time to time for the space of ten days, and from any one place to any other

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Election Law.

place within their respective divisions of the district; and shall have power to administer oaths to all persons objected to or claiming to be inserted in any such lists and to all witnesses who may be tendered on either side; and if any person taking any oath under this Chapter shall wilfully swear falsely, such persons shall be guilty of perjury and be punished accordingly.

24.—Such Justices shall upon such hearing in open court determine upon the validity of all claims and objections, and shall write their names or initials against the names respectively struck out or inserted and against any part of the said lists in which any mistake shall have been corrected, and shall sign their name to every page of the several lists revised; and such lists of electors so signed shall be kept among the records of the Courts of Sessions of the respective districts.

25.—Such Justices shall forthwith cause the said lists to be truly copied in alphabetical order in a book or register; and shall prefix to every name so copied out its proper number, beginning the number from the first name and so continuing to the last name.

26.—Such register or book of electors shall be completed and delivered to the chief magistrate of the district in sufficient time before the then or next General or Quarter Sessions of the Peace for such district; and a true copy of such register shall be transmitted by such chief magistrate immediately after such General or Quarter Sessions to the Colonial Secretary.

27.—Any person claiming to vote in the election of a member for any district aforesaid who shall feel aggrieved by

Election Law.

the decision of any Justice as to his claim to vote, may appeal to the then or next General or Quarter Sessions of the Peace for the district; and the Justices at such General or Quarter Sessions shall revise and alter the said list of voters by the addition of the name of such person, if it shall appear to the satisfaction of such Justices that such person was on the opening of the Court of Revision duly qualified to vote as an elector of the said district.

28.—In the event of any election being appointed to take place at any time before the expiration of the period of four years limited for taking and revising the said lists, and after the expiration of one year from the time when such lists shall have been last taken and revised, the Governor in Council may cause the provisions of this Chapter to be put in operation in any of the districts of this Island, with such alterations in the manner of taking and revising the said lists as may be found necessary.

29.—A Stipendiary Magistrate or Justice, by direction of the Governor in Council, may exercise all the powers conferred by this Chapter on a Court of General or Quarter Sessions in any district or sub-division of district where such sessions may not be held.

PART III.

ELECTION OF MEMBERS OF THE LEGISLATIVE ASSEMBLY.

30.—Every writ for the election of a member of the Legislative Assembly shall be dated and be returnable on such day, and shall be addressed to such person as the Governor shall determine, and such person shall be the Returning Officer at such election: Provided always, that if the person to whom the writ is addressed refuses, or is disquali-

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fied, or is unable to act, the Governor may appoint another person to be such Returning Officer.

31.—None of the persons hereinafter mentioned shall be appointed Returning Officers or Deputy Returning Officers, Election Clerks or Poll Clerks, or to any other office in connection with the said election or registration of voters therefor, that is to say :

- (a) Members of the Executive Council ;
- (b) Members of the Legislative Council or Legislative Assembly ;
- (c) Ministers, Priests, or Ecclesiastics of any religious faith or worship ;
- (d) Judges of the Supreme or Districts Courts ;
- (e) Persons who have served in the Legislature in the session immediately preceding the election, or in the then present session ;
- (f) Persons who have been found guilty by any court for the trial of controverted elections, or other competent tribunal, of any offence or dereliction of duty under this Chapter ;
- (g) Persons who are intending candidates.

32.—The writs of election shall be in the form of Schedule F to this Act, and in case of elections held out of the electoral district of St. John's shall, immediately after the issuing thereof, be transmitted to the respective Returning Officers.

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33.—The Governor shall by proclamation fix the days and places of nomination and the days of polling in the several electoral districts, and not less than twenty-one days shall intervene between the publication of the proclamation and the day of polling. At every general election one and the same day shall be fixed for the nomination and one and the same day for the polling in all the electoral districts; and the day for holding the poll shall be the tenth day next after the expiration of the day fixed for the nomination of the candidates. The court house, or some other public or private building, in the most convenient locality for the great body of the electors of each electoral district, shall be the place fixed for the nomination of candidates.

34.—The Governor by proclamation shall constitute polling districts or sections and appoint polling stations, and may if expedient by proclamation, from time to time, alter the same or appoint additional polling stations.

35.—At the same time that the election writs are transmitted, the Colonial Secretary shall provide each Returning Officer with the following materials:

- (a) A duly certified list of electors qualified to vote in the electoral district;
- (b) Ballot box for each polling station in the electoral district;
- (c) Materials for voters in each polling station of the electoral district to mark their ballot papers;
- (d) At least ten copies for each polling station of the printed directions for the guidance of voters set forth in Schedule O of this Chapter.

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Election Law.

- (e) Copies of the proclamation mentioned in sections thirty-three and thirty-four of this Chapter.

36.—The ballot boxes shall be made of durable material, each box being provided with a lock and key and a convenient aperture for depositing the ballots therein, and shall be so constructed as to secure the ballots deposited therein from loss or illegal interference. Such ballot boxes shall be under the control of the Colonial Secretary, who shall preserve them for use at elections.

37.—On receiving the writ of election, the Returning Officer shall endorse thereon the date of his receiving the same, and shall forthwith take the oath of office in form Schedule G, which shall be administered by a Justice of the Peace.

38.—After taking the oath of office, the Returning Officer shall forthwith by writing, in the form of Schedule H, appoint an Election Clerk, and may at any time during the election appoint in the same manner another Election Clerk, in case the one so appointed shall resign, refuse or be unable to perform his duties as such. The Election Clerk shall before acting take the oath of office in the form of Schedule I.

39.—No person shall act as Deputy Returning Officer, Election Clerk or Poll Clerk for the purposes of an election, who is at the time of the election or has within one month before the election, been in the constant or permanent service of a candidate, or who has been employed by any candidate or his agent or any other person on his behalf or in his interest in or about the election, under a penalty not exceed-

Election Law.

ing one hundred dollars, to be recovered from such person in a summary manner before a Stipendiary Magistrate by any person who shall sue for the same

40.—The duty of the Election Clerk shall be to assist the Returning Officer in the performance of his duties, and to act in his stead as Returning Officer whenever the Returning Officer shall be unable or shall refuse to perform his duties and shall not have been replaced by another, and in such a case he shall have the same power to appoint an Election Clerk as section thirty-eight of this Act confers upon the Returning Officer first appointed.

41.—On receiving the proclamations mentioned in sections thirty-three and thirty-four of this chapter, the Returning Officer shall cause copies of them to be posted up at the several polling stations within the electoral district, together with the notices in the form of Schedule J to this chapter, of the place and time of nomination, the places and time of polling, and the place of declaring the result of the poll.

42.—Where the Returning Officer or his deputy is by this chapter required or authorized to give any public notice, and no special mode of giving the same is mentioned, he may give the same by advertisement, placards, hand-bills or such other means as he may think best calculated to give the information to the electors.

43.—The time appointed for the nomination of candidates shall be from the hour of ten a. m. until the hour of two in the afternoon of the day fixed for that purpose.

44.—The nomination of candidates shall be by writing, in the form of Schedule K, signed by two electors, giving the

Election Law.

names, residence and description of each candidate, and filed with the Returning Officer at the time and place of nomination, or at any other place, and at any other time between the date of the proclamation mentioned in section thirty-three and the time of nomination. Each candidate shall be nominated by a separate nomination paper; but the same electors or any of them may subscribe as many nomination papers as there are members to be elected.

45.—No nomination paper shall be valid and acted upon unless it shall be accompanied by the written consent of the person therein nominated, except when the candidate is absent from the place at which the nomination is held, when such absence shall be stated in the nomination paper; nor unless the sum of one hundred and fifty dollars be paid to the Returning Officer on delivery of the nomination paper. Of the sum so paid, the Returning Officer shall return one hundred and thirty dollars to any candidate elected without opposition, and the sum of seventy-five dollars to any successful candidate in a contested election, and the same amount to any unsuccessful candidate who shall poll one-third the total number of votes polled by any successful candidate at the same election in the same electoral district.

46.—The Returning Officer shall require the oath of one or more electors that the several persons signing any nomination paper are electors and entitled to vote; that they have signed the paper in the presence of such persons or one of them; that the candidate has signed the consent produced, or is absent from the place where such nomination is held and has consented to his nomination. Such oath shall be in the form of Schedule L, to this chapter, and the fact of

Election Law.

its having been taken shall be stated by the Returning Officer on the back of the said nomination paper.

47.—The Returning Officer being furnish with the nomination paper mentioned in section forty-four, and sections forty-five, forty-six and forty-eight having been complied with, shall publicly proclaim that such person has been duly nominated as a candidate for election, and shall give a certified list of the candidates nominated to any candidate or agent applying for the same.

48.—The qualification of persons to be elected to serve as members of the Legislative Assembly shall be a net annual income, arising from any source whatever, of four hundred and eighty dollars, or the possession of property exceeding two thousand four hundred dollars, clear of all incumbrances; and and the length of the period of residence within the said Island shall be a period of two years next preceding such election; and every candidate for such election shall be a male British subject of the full age of twenty-one years, of sound understanding and never having been convicted in due course of law of any infamous crime.

- (a) Every candidate for election present at the nomination of candidates shall, before nomination, deliver, or cause to be delivered, to the Returning Officer a declaration signed by himself and sworn before the Returning Officer, which declaration shall be according to one of the forms in Schedules M1. and M2. of this chapter, according as the qualification may be in income or property.

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- (b) Before any candidate for election not present at the nomination of candidates shall be put in nomination, a declaration in the form of Schedule M3. or M4. shall be delivered to the Returning Officer, according as the qualification is in income or property, signed by the candidate or by two electors and sworn before a Stipendiary Magistrate, a Justice of the Peace or the Returning Officer.

49.—Whenever only one candidate, or only such a number of candidates as are required by law to be elected to represent the electoral district for which the election is held, has or have been nominated within the time fixed for that purpose, the Returning Officer shall forthwith make and transmit to the Colonial Secretary his return upon the back of the writ for holding such election that such candidate or candidates, as the case may be, is or are duly elected for the said electoral district; of which return he shall deliver or send within forty-eight hours a duplicate or certified copy to each person elected, and such return shall be in the form of Schedule N. to this chapter.

50.—The Returning Officer shall accompany his return to the Colonial Secretary with a report of his proceedings, and of any nomination proposed and rejected for non-compliance with the requirements of this chapter.

51.—If more candidates than the number required to be elected for the electoral district are nominated in the manner required by this chapter, it shall be the duty of the Returning Officer to grant a poll for taking the votes of the electors, and to cause to be posted up notices of his having granted such poll in the form of Schedule O., indicating the

Election Law.

names (alphabetically arranged), residence and occupation of the candidates so nominated, which notices shall as soon as practical after the nomination be posted or displayed at all the places where the proclamation for the election has been posted up.

52.—Any candidate nominated may withdraw at any time after his nomination and before the closing of the poll, by filing with the Returning Officer a declaration on oath in writing and signed by himself, to the effect that he withdraws from such nomination freely and voluntarily, and that he has not received directly or indirectly from any person or body any gift, loan, offer, promise or any promise to procure or to endeavor to procure any money, office, place or appointment or other consideration for such withdrawal (which oath shall be in the form of Schedule P to this Chapter), and any votes cast for the candidate who shall have so withdrawn shall be null and void. And in case after the withdrawal there should remain but one candidate, or no more than the number to be elected then it shall be the duty of the Returning Officer to return as duly elected in the manner prescribed in section forty-nine, the candidate or candidates so remaining, without waiting for the day fixed for holding the poll or for the closing of the poll, if such withdrawal be filed on the polling day.

53.—It shall be the duty of the Returning Office on a poll being granted, when the election is to be held in Saint John's East or West, Harbor Grace, Carbonear, Brigus, Bay-de-Verde, Harbor Main or Ferryland and in other districts, upon the receipt of the election writ—

- (a) To appoint by writing in the form of Schedule Q to this chapter, one Deputy Returning Officer for

Election Law.

each polling station comprised in the electoral district, who shall before acting as such take the oath of office in the form of Schedule R to this chapter.

- (b) To furnish each Deputy Returning Officer with a copy of the list, or of such portion of the list as contains the names (arranged alphabetically) of the electors qualified to vote at the polling station for which he is appointed, such copy being first certified by himself.
- (c) To furnish each Deputy Returning Officer, in districts in which electors are permitted by proclamation under section seventy of this chapter to vote at any polling station in the district, with a full and complete copy of the revised list of electors at least two days before the day of election.
- (d) To furnish to each Deputy Returning Officer at least two days before the polling day, a ballot box, together with the lock and key thereof.
- (e) To furnish each Deputy Returning Officer with a number of ballot papers equal to the number of voters entitled to vote in his booth (all being of the same description and as nearly as possible alike), and consecutively numbered upon the back and upon the counterfoil, as prescribed in section fifty-four of this chapter; and with the necessary materials for voters to mark their ballot papers; and to keep a correct record of

Election Law.

the number of ballot papers furnished to each Deputy Returning Officer.

- (f) To furnish each Deputy Returning Officer with at least ten copies of printed directions for the guidance of voters in voting as set forth in Schedule O to this chapter, which printed directions the Deputy Returning Officer shall, before or at the opening of the poll on the day of polling, cause to be posted up in some conspicuous places outside of the polling station and also in each compartment of the polling station.

54.—The ballot shall consist of a paper (in this chapter called a ballot paper) shewing the name and description of the candidates, alphabetically arranged in order of their surnames, or if there be two or more candidates with the same surname, in order of their other names; and such ballot paper shall be in the form of Schedule S to this chapter. Each ballot paper shall have a number printed or written on the back, and shall have attached a counterfoil with the same number printed or written on the face. All the ballot papers shall be numbered consecutively from one upwards.

55.—The Returning Officer may if he think fit preside at any polling station, and the provisions of this chapter relating to a Deputy Returning Officer shall apply to such Returning Officer or Deputy Returning Officer.

56.—Each Deputy Returning Officer shall forthwith appoint, by writing in form of Schedule T to this chapter, a Poll Clerk, who, before acting as such, shall take the oath in the form Schedule U to this chapter.

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57.—In case any Deputy Returning Officer should refuse or be unable to act, the Returning Officer may appoint another person to act in his place as Deputy Returning Officer, who before acting as such shall first take the oath prescribed in Schedule R to this chapter; and in case no such appointment be made, the Poll Clerk, without taking another oath of office, shall act as Deputy Returning Officer.

58.—Whenever the Poll Clerk acts as Deputy Returning Officer he shall, by writing in the form of Schedule V. to this chapter, appoint a Poll Clerk to act in his stead, who shall take the oath required by Schedule U. to this chapter.

59.—Any person producing to the Returning Officer or Deputy Returning Officer at any time a written authority from a candidate to represent him at the election or at any proceeding of the election, and making oath in the form of Schedule W. to this chapter, shall be deemed an agent of such candidate within the meaning of this chapter.

60.—Every Returning Officer or Deputy Returning Officer of an electoral district, and every partner or clerk of either of them, who acts as agent of any candidate in the management or conduct of his election for such electoral district, is guilty of a misdemeanor.

61.—A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present with or without him at any place at which his agent may, in pursuance of this chapter, be authorized to attend.

Election Law.

62.—When in this chapter any expressions are used requiring or authorizing any act to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done; and the non-attendance of any agents or agent at such time and place shall not, if the act or thing be otherwise duly done, invalidate in anywise the act or thing done.

63.—The poll when granted shall be held at each polling station in a building of convenient access (not being a place of public worship or licensed under the License Act), with an outside door for the admittance of the voters, and having if possible another door through which they may leave after having voted. Every polling station shall be furnished with compartments in which the voters can mark their votes screened from observation, and without means of ingress or egress during the polling except through the room in which the ballot box is kept, and it shall be the duty of the Returning Officer to direct and of the Deputy Returning Officer to see that a sufficient number of such compartments are provided at each polling station.

64.—Every Returning Officer, Deputy Returning Officer, clerk or agent, or other persons authorized to attend at a polling station or at the counting of the votes shall, before entering upon his duties or exercising his functions, make an oath of secrecy in the form of Schedule X. to this chapter in the presence, if he be the Returning Officer, of a Justice of the Peace, or in the absence of such Justice of the Peace, of the Deputy Returning Officer; and if he be any other officer or

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Election Law.

agent, of a Justice of the Peace, of the Returning Officer or of the Deputy Returning Officer.

65.—(a) Every officer, clerk and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate to any person any information as to whether any person on the list of electors or supplementary list has or has not applied for a ballot paper or voted at that station.

(b) No officer, clerk or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted.

(c) No officer, clerk, agent or other person shall communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted.

(d) Every officer, clerk, agent and other person in attendance at the counting of votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting or communicate any information obtained at such counting, as to the candidate for whom any vote is given in any particular ballot paper.

(e) No elector shall, except in the case provided for in section seventy-seven, show his ballot paper

Election Law.

when marked to any person, so as to allow the name of the candidate for whom he votes to be known.

(f) No person shall directly or indirectly induce or endeavor to induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

(g) Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before a Stipendiary Magistrate or two Justices of the Peace, to imprisonment for any time not exceeding six months, with or without hard labor.

66.—Every Deputy Returning Officer shall on the day preceding the day appointed for taking the poll, and after at least twenty-four hours public notice, attend at the place appointed as the polling booth at which such Deputy Returning Officer is to preside, and shall, from the hour of nine a.m. to eight p.m., publicly receive and hear applications to be admitted to vote at such polling booth, from any persons whose names may have been omitted from the list of duly qualified voters entitled to vote at his booth, but who shall claim to be otherwise qualified voters and entitled to vote at such booth. Every such applicant shall answer upon oath, to be administered by the Deputy Returning Officer, all such questions touching his qualification to vote as shall be prescribed by rules to be made and published by the Governor in Council. Upon its being made to appear to the Deputy Returning

Election Law.

Officer *prima facie* that such applicant is qualified to vote, the Deputy Returning Officer shall enter his name upon a separate list or register, to be called supplementary list of electors, containing the names of all such applicants, and such other particulars as shall be prescribed by rules as above provided. On the day of polling every such person shall be admitted to vote, subject to enquiry and determination by the court upon a trial of a controverted election, as to the fact of his qualification as a voter.

67.—Each Deputy Returning Officer shall open the poll assigned to him at the hour of eight o'clock in the morning, and keep the same open until four o'clock in the afternoon, and shall during that time receive, in the manner hereinafter prescribed, the votes of the electors duly qualified to vote at such polling place: Provided, that in the electoral district of St. John's, the poll shall be kept open till eight o'clock in the evening.

68.—At the hour fixed for opening the poll, the Deputy Returning Officer and Poll Clerk shall, in the presence of the candidates, their agents, or not less than three voters, whose names shall be recorded on the poll book, open the ballot box and ascertain that there are no ballots or other papers in the same, and shall then lock it up and place their seals upon it in such a manner as to prevent its being opened without breaking such seal, and shall place it in view for the receipt of ballot papers and keep it so locked and sealed. Immediately after the ballot box is locked as herein provided, the Deputy Returning Officer shall call upon the electors to vote.

69.—In addition to the Deputy Returning Officer and the Poll Clerk, the candidates and their agents (not exceed-

Election Law.

ing one for each candidate) in each polling station, and in the absence of agents, one elector to represent each candidate on the request of such elector, and no others, shall be permitted to remain in the room where the votes are given during the whole time that the poll remains open: Provided always, that any agent having a written authorization from a candidate, and making oath as provided in section fifty-nine, shall always be entitled to represent such candidate in preference to and to the exclusion of any elector who might otherwise claim the right of representing such candidate.

70.—Each elector shall vote at the polling station in which he is qualified to vote and no other, except otherwise permitted by proclamation or by the provision of section seventy-one of this chapter; and it shall be the duty of the Returning Officer to secure the admittance of every elector into the polling booth, and to see that he is not impeded or molested at or about the polling booth.

71.—A Deputy Returning Officer, Poll Clerk or Agent, entitled to vote at an election, shall have the right to vote at the polling station where he shall be actually engaged during polling day, instead of at the station where he would otherwise have been entitled to vote.

72.—The electors shall be introduced one at a time into the room where the poll is held, each elector shall declare his name, surname and addition, which shall be entered or recorded in the voters' list to be kept for that purpose by the Poll Clerk, and if the same be found on the list of electors for the polling station he shall receive from the Deputy Returning Officer a ballot paper: Provided that if the candidate or his agent do declare upon oath that he has a *bona fide* reason

Election Law.

to believe that the applicant for a ballot paper is not the person he claims to be, or that he is not of the full age of twenty-one years, or that he has voted before at such election, or at that or any other polling place, or has been subject to bribery, such elector shall take the oath of qualification in the form of Schedule L L.

73.—No person shall vote more than once in the same electoral district at the same election, but each elector may vote for as many candidates as are required to be elected to represent the electoral district for which the election is held.

74.—(1) If a person representing himself to be a particular elector applies for a ballot paper after another person has voted as such elector, the applicant, upon taking the oath in the form of Schedule A A to this chapter, and otherwise establishing his identity to the satisfaction of the Deputy Returning Officer, shall be entitled to receive a ballot paper, on which the Deputy Returning Officer shall put his initials, the number corresponding to the number upon the voters' list opposite the name of said elector, and the words "second voter"; and he shall thereupon be entitled to vote as any other elector.

(2) The name of such voter shall be entered upon the voters' list, and a note shall be made of his having voted on a second ballot paper issued under the same name, and of the oath of identity having been required and made, as well as of any objections having been made on behalf of any and which of the candidates.

Election Law.

75.—The votes shall be given by ballot. At the time of voting the ballot paper shall be marked on the back with the initials of the Deputy Returning Officer, detached from the counterfoil and delivered to the elector within the polling booth, and the number of such voter upon the voters' list shall be marked on the counterfoil. The Deputy Returning Officer shall instruct the elector how and where to affix his mark and how to fold his ballot paper, but without enquiring or seeing for whom the elector intends to vote, except in the case provided for in section seventy-seven.

76.—The elector on receiving the ballot paper shall forthwith proceed into a compartment of the polling booth and there mark his ballot paper, making a cross on any part of the ballot paper within the division or divisions (if more than one are to be elected) containing the name or names of the candidate or candidates for whom he intends to vote, after which he shall fold it up so as to conceal his vote and hand it so folded up to the Deputy Returning Officer, who shall without unfolding it ascertain by examining the initials and the number upon it, and by comparing the number upon it with the number upon the counterfoil, that it is the ballot paper which he furnished to the elector, and shall then immediately, and in the presence of the elector, place the ballot paper in the ballot box.

77.—The Deputy Returning Officer, on application of any voter who is unable to read, or incapacitated by blindness or other physical cause from voting in the manner prescribed by this chapter, shall assist such voter, within the compartment, by marking his ballot in the manner directed by the voter, in the presence of a sworn agent of each candi-

Election Law.

date, or of a sworn elector representing him, if such agent or elector be present in the polling booth, and of no other person, and by placing such ballot paper in the ballot box. And the Deputy Returning Officer shall cause a list to be kept of the names of voters whose ballot papers have been so marked in pursuance of this section, with the reason why each ballot paper was so marked.

78.—When application is made to the Deputy Returning Officer by any voter who is unable to read, or is incapacitated by blindness or other physical cause from voting in the manner prescribed by this chapter, before marking his ballot paper the Deputy Returning Officer shall require the voter making such application to make oath of his incapacity to vote without assistance in the form of Schedule B B.

79.—No voter having refused to take the oath or affirmation required as aforesaid by this chapter, when requested to do so, shall receive a ballot paper or be admitted to vote, or upon leaving the booth shall be permitted to return.

80.—A voter who has inadvertently dealt with the ballot paper given him in such manner that it cannot be conveniently used, may, on delivering the same to the Deputy Returning Officer, obtain another ballot paper in the place of that so delivered up.

81.—Every elector who takes his ballot paper out of the polling booth shall incur a penalty of two hundred dollars, or in default of payment shall be liable to imprisonment for a period not exceeding six months.

82.—The Poll Clerk shall keep a voters' list in the form of Schedule C C to this chapter, on which he shall inscribe:—

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- (a) The name, occupation and residence of the person who enters the booth to vote.
- (b) The word "voted" opposite the name of each elector as soon as his ballot paper has been deposited in the ballot box.
- (c) Opposite the name of any voter whose ballot paper has been marked for him, the reason why such ballot paper was so marked.
- (d) The words "second ballot" opposite the name of any voter to whom a second ballot paper has been delivered because of the defacement or destruction of the first.
- (e) The words "second voter" opposite the name of any voter to whom a ballot paper has been given, after another has voted in the same name, and who has taken the oath of identity prescribed in section seventy-four.
- (f) The word "supplementary list" opposite to the name of every person who has been permitted to vote under the provisions of section sixty-six of this chapter.
- (g) The nature of an objection, if any, made against any person applying for admission to vote.

83.—Every voter shall vote without undue delay, and shall quit the polling booth so soon as his ballot paper has been put into the ballot box.

84.—If, by reason of obstruction or other cause, any Returning Officer or his Deputy shall be prevented or hin-

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dered from duly proceeding or taking the poll, he shall adjourn the poll to the next day, not being Sunday, and to the next succeeding day also, if necessary, in order to complete the taking of the poll.

85.—The Deputy Returning Officer of each booth, immediately after the close of the poll, shall, in the presence of the Poll Clerk and the candidates or their agents, and if the candidates or their agents are absent, then in the presence of three electors, make up into separate packets, sealed with the official seal of the booth, and the seals of such candidates or their agents, and if the candidates and their agents be absent, of such of the said electors as desire to affix their seals,—

- (a) The ballot box in use at his booth, unopened, but with the key attached; and
- (b) The unused and spoilt ballot papers placed together; and
- (c) The list of those who have voted (a copy of which, signed by himself and the Poll Clerk, shall be kept in his possession; and
- (d) The counterfoils of the ballot papers;

And shall deliver such packets to the Returning Officer or his messenger, appointed under the provisions of section eighty-seven, who shall, before receiving the ballot boxes and packets of papers, take the oath in the form of Schedule F F. These packets shall be accompanied by a statement in writing, made by the Deputy Returning Officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of—

Election Law.

- (a) Ballot papers in the ballot box.
- (b) Unused and spoilt ballot papers.

The Deputy Returning Officer and Poll Clerk shall, respectively, take the oaths in the form of Schedules D D and E E to this chapter, which shall be annexed to the statements above mentioned.

86.—No person, except by order of the Supreme Court or a Judge thereof having cognizance of an election petition, complaining of an undue return or undue election, shall open the packets of counterfoils after the same have been once sealed up, or be allowed to inspect any such counterfoils after the same have been once sealed up by the Deputy Returning Officer: Provided that such order shall not be made by the said Court or Judge until it has been proven and declared on the trial of such petition that the vote of the electors or an elector is invalid, and provided that, in the making and carrying into effect of any such order, care shall be taken that the manner in which any other than the elector or electors, whose vote shall be declared to be invalid, may have voted, shall not become known or discovered.

87.—The Returning Officer shall appoint a person or persons, by a writing in the form of Schedule F F, to collect the ballot boxes and parcels from the several polling stations in his electoral district, or to convey the same to the Colonial Secretary. Such person or persons shall, before proceeding to discharge the duties aforesaid, take the oath prescribed in Schedule G G to this chapter, before the Returning Officer, a Deputy Returning Officer, or a Justice of the Peace, and upon the performance thereof, the oath in Schedule H H to this chapter.

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88.—The Returning Officer shall make arrangements for counting the votes in the presence of the candidates or of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the candidates or their agents notice in writing of the time and place at which he will begin to count the same.

89.—The Returning Officer, his assistants and clerks, the candidates and the agents of the candidates, and no other person shall be present at the counting of the votes, except Peace Officers, who may be present with the sanction of the Returning Officer.

90.—In case the ballot boxes should not all have been returned on the day fixed for counting the votes, the Returning Officer shall adjourn the proceedings to a subsequent day, such subsequent day not being more than a week later than the day originally fixed for the purpose of counting the votes.

91.—In case the ballot boxes, or any of them, have been destroyed, lost, or for any other reason are not forthcoming within the day so fixed, the Returning Officer shall ascertain the cause of the disappearance of the ballot boxes, and shall call on each Deputy Returning Officer, whose ballot box is missing, or any other person having the same, for the copy of the "voters' list" kept in the polling booth over which the said Deputy Returning Officer presided on the day of polling, which copy shall be verified by the Deputy Returning Officer and Poll Clerk, upon oath, in the form of Schedule I I. to this chapter, before a Stipendiary Magistrate, a Justice of the Peace, or the Returning Officer; and in case such "voters' list" cannot be obtained, he shall ascertain by such evidence as he is able to obtain, the total number of persons who voted

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at the polling station, the ballot box of which is missing, and he may adjourn the counting from time to time, but not for a longer period than one week in all for the purpose of obtaining such voters' list or evidence.

92.—Upon the receipt by him of the missing ballot box, the voters' list or evidence of the total number of votes given at the polling station, the ballot box of which is missing, the Returning Officer shall proceed to count the votes in the presence of the Election Clerk, the candidates or their agents if present, and three electors if the candidates or their agents be not present; and before doing so shall open each ballot box, and taking out the papers shall count and record the number thereof and then mix together the whole of the papers contained in all the ballot boxes.

- (1) The Returning Officer while counting and recording the numbers of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers on the backs of such papers.
- (2) Any ballot paper not supplied by a Deputy Returning Officer, or on which votes are given to more candidates than are to be elected, or on which anything is written or marked by which the voter can be identified other than the numbering in sections fifty-three and fifty-four, or which is unmarked, or from which it is uncertain for which candidate the elector voted, shall be void and shall not be counted.

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- (3) The Returning Officer shall endorse "rejected"; on any ballot papers which he may reject as void.
- (4) The Returning Officer shall then count up the votes given for each candidate upon the ballot papers not rejected.
- (5) The other ballot papers being counted, and a list kept the number of votes given to each candidate, and of the number of rejected ballot papers, all the ballot papers indicating the votes given for candidates shall be put into a ballot box or boxes marked "accepted," and these ballot boxes sealed with the seal of the Returning Officer and Election Clerk, and of such of the candidates or their agents as desire to annex their seals, shall be transmitted to the Colonial Secretary in manner provided in section 101; those rejected shall be put back into a different ballot box or boxes marked "rejected," and the sealed packages of counterfoils shall be put into a ballot box or boxes marked "counterfoils."

93.—The Returning Officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshments, and excluding (except so far as he and the agents or candidates agree) the hours between eleven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the Returning Officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the candidates or their agents as desire to affix their seals, and shall otherwise

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take proper precautions for the security of such papers and documents.

94.—The Returning Officer shall take a note of any objection made by any candidate, his agent or any elector present, to any ballot paper found in the ballot box, and shall decide any question arising out of the objection, and the decision of such Returning Officer shall be final, subject only to reversal upon a recount before a Judge of the Supreme Court as hereinafter provided, or on petition or proceedings questioning the election or return. Each objection to a ballot paper shall be numbered, and a corresponding number placed on the back of the ballot paper, and initialed by the Returning Officer.

95.—If upon summing up the vote for each candidate at the conclusion of the counting, it be found that the number of ballot papers deposited in the missing ballot box or boxes, if added to the votes appearing by the count to have been given to any candidate, could not affect the result of the election, the Returning Officer shall declare elected the candidate or candidates appearing to have a majority of votes.

96.—If upon summing up the votes for each candidate at the conclusion of the counting, it be found that the number of ballot papers deposited in the missing ballot box or boxes, if added to the votes appearing by the count to have been given to any candidate, might affect the result of the election, the Returning Officer shall direct that another poll shall be held at and for such station, at a time to be appointed by him as soon as may be convenient, within not more than twenty days from the holding of the first poll, of which due notice shall be given; and the Returning Officer shall have power to postpone the declaration of the poll until after

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the holding of the said second poll at the said polling station. At such second poll only such voters as shall appear by the voters' list furnished by the Deputy Returning Officer, or by the evidence possessed by the Returning Officer, to have voted at the first poll shall be permitted to vote. The said second poll shall be conducted in all respects in the same manner and subject to the same regulations as are hereinbefore provided in relation to the first poll, and shall in all respects, for all purposes, be held to be of the same force and effect as if the same had taken place upon the day first appointed for taking the poll.

97.—Upon the receipt of the ballot box or boxes used at such second poll, he shall proceed to count the votes in the manner and subject to the conditions hereinbefore contained in reference to the counting of votes, and upon summing up the votes at such second poll, with the votes previously counted, he shall declare elected the candidate or candidates having a majority of votes.

98.—Whenever, upon the final addition of votes by the Returning Officer, an equality of votes is found to exist between any two or more of the candidates, and the addition of a vote would entitle any of such candidates to be declared elected, the Returning Officer shall give such additional or casting vote.

99.—At the conclusion of the counting the Returning Officer shall make out a statement in writing shewing—

- (a) The number of ballot paper sent by him before polling day to each Deputy Returning Officer.
- (b) The number of ballot papers stated by each Deputy Returning Officer to be in the ballot box deliver-

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ed to the Returning Officer's messenger, and the number of ballot papers found by him in each ballot box at the commencement of the counting.

- (c) The number of unused and spoilt ballot papers stated by each Deputy Returning Officer to be in the package delivered to the Returning Officer's messenger, and the number of such unused and spoilt ballot papers found by him in each package at the conclusion of the counting.
- (d) The number of ballot papers accepted by him and the number rejected.
- (e) The number of votes upon the accepted ballot papers for each candidate.

Such statement shall be in the form of Schedule J J, and shall be sworn before Stipendiary Magistrate or Justice of the Peace. The Returning Officer shall make and keep a copy of such statement, and certified copies shall be delivered to any candidate or his agent applying for the same, and the original shall be sent with the return to the Colonial Secretary, who shall cause it to be published in the *Royal Gazette*.

100.—The Returning Officer shall, immediately after the due execution of the writs, make and transmit his return upon the back of the election writ to the Colonial Secretary that the candidate or candidates having the largest number of votes has or have been duly elected, and shall forward to each of the respective candidates a duplicate or copy thereof, and such return shall be in the form of Schedule K K to this chapter. The Returning Officer shall also transmit to

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the Colonial Secretary with his return the original statements of the several Deputy Returning Officers, together with the voters' list used in the several polling districts, and all affidavits, certificates and all other documents used or required at such election, or which may have been transmitted to him by the Deputy Returning Officers. The Returning Officer shall accompany his return to the Colonial Secretary with a report of his proceedings, in which report he shall make any observations he may think proper as to the state of the poll books as received by him.

101.—The Returning Officer shall forward to the Colonial Secretary, by a messenger appointed under the provisions of section eighty-seven, together with his return, all the ballot boxes, packets of ballot papers and packets of certificates in his possession, the ballot paper accounts, lists of votes marked by the Deputy Returning Officer, statements relating thereto sent by each, and all the original documents in his possession, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the district for which such election was held.

102.—If any Returning Officer wilfully delays, neglects or refuses duly to return any person that ought to be returned to serve in the House of Assembly for any electoral district, such person may, in case it has been determined, on the hearing of an election petition respecting the election for such electoral district, that such person was entitled to have been returned, sue the Returning Officer having so wilfully delayed, neglected or refused duly to make such return of his election in any of the Superior Courts in this Colony, and shall recover a sum of five hundred dollars, together with all damages he has sustained by reason thereof, and full costs of

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suit: Provided that such action be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of the trial of the petition relating to such election.

103.—Upon the result of a recount being certified to him by a Judge of the Supreme Court, or immediately after the expiration of twenty-five days from the date of the return of any candidate or candidates, unless he shall in the meantime have been served with an order for a recount, the Colonial Secretary shall give notice in the *Royal Gazette* of the name or names of the candidate or candidates elected.

104.—No person shall be allowed to inspect any ballot papers in the custody of the Colonial Secretary, except under the order of the Supreme Court or a Judge thereof, to be granted by such Court or Judge on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers or for the purpose of contesting an election or return, and any such order for such inspection or production may be subject to such conditions as to persons, time, place and mode of inspection, and otherwise, as the Court or Judge making the same may think expedient.

105.—The Colonial Secretary shall retain, sealed for one year, all the ballot papers and counterfoils relating to an election forwarded to him in pursuance of this chapter by a Returning Officer, and then unless otherwise directed by an order of the Supreme Court, shall cause them to be destroyed and all documents so forwarded other than ballot papers and counterfoils shall, during the said year, be open to public

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inspection, and shall, with the ballot papers and counterfoils, at the end of the said year, be in like manner destroyed.

196.—In case it is made to appear within twenty-one days after that on which the Returning Officer has made the final addition of the votes, for the purpose of declaring the candidate or candidates elected, on the affidavit of any credible witness to a Judge of the Supreme Court, that such witness believes that the Returning Officer, at any election in counting the votes, has improperly counted or rejected any ballot papers at such election, or has improperly summed up the votes, and in case the applicant deposits within the said time with the clerk of the Court the sum of one hundred dollars as a security for the cost of the recount in respect of the candidate appearing by the addition to be elected, the said Judge shall, within four days after the receipt of the said affidavit by him, appoint a time to recount the votes or to make the final addition, as the case may be, and shall give notice in writing to the candidates or their agents of the time and place at which he will proceed to recount the same or to make such final addition, as the case may be, and shall summon and command the Colonial Secretary, or a clerk in his office, to attend then and there with the parcels containing the ballots used at the election, which command the Colonial Secretary or clerk shall obey.

- (a) The said Judge, the Colonial Secretary or clerk, and each candidate or his agent appointed to attend such recount of votes, or in case any candidate cannot attend, then not more than one agent of such candidate, and if the candidates and their agents are absent, then at least three electors of

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the electoral district in which the recount is held shall be present at such recount of the votes.

- (b) At the time and place appointed, the said Judge shall proceed to recount all the votes or ballot papers returned by the Returning Officer, and shall, in the presence of the parties aforesaid, if they attend, open the sealed packets containing, (1), the used ballot papers which have been counted; (2), the rejected ballot papers; (3), the spoilt ballot papers,—and no other ballot papers.
- (c) The Judge shall, as far as practicable, proceed continuously, except on Sunday, with such recount of the votes, allowing only time for refreshment, and excluding (except so far as he and the parties aforesaid agree) the hours between six o'clock in the evening and nine on the succeeding morning. During the excluded time (and recess for refreshments) the said Judge shall place the ballot papers and other documents relating to the election close under his own seal and the seals of such other of the parties as desire to affix their seals, and shall otherwise take precautions for the security of such papers and documents.
- (d) The Judge shall proceed to recount the votes according to the rules set forth in section 92, and shall verify or correct the ballot paper account and statement of the number of votes given for each candidate; and upon the completion of such recount, or as soon as he has thus ascertained

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the result of the poll, he shall seal up all the said ballot papers in separate packets, and shall forthwith certify the result to the Colonial Secretary, who shall then declare to be elected the candidate having the highest number of votes,— and in case of an equality of votes, the names of the candidates who have received an equal number of votes shall then and there be written upon cards, which cards shall be put into a box, and the Colonial Secretary or his clerk shall draw one of the said cards from the box in the same manner as is done by the Sheriff in drawing the names of jurors for a jury panel, and the candidate whose name is upon the card thus drawn shall be declared elected.

(c) The Colonial Secretary, after the receipt of a notice from the Judge of a recount of ballots, shall delay giving notice in the *Royal Gazette* of the return of a candidate or candidates until he receives a certificate from the Judge of the result of such recount, and upon receipt of such certificate, the Colonial Secretary shall, if necessary, correct the return made by the Returning Officer in accordance with such certificate.

(f) In case the recount or addition does not so alter the result of the poll as to affect the return, the Judge shall order the costs of the candidate appearing to be elected to be paid by the applicant, and the said deposit shall be paid out to the said candidate on account thereof, so far as necessary, and the Judge shall tax the costs on giving his

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decision; and if the deposit is insufficient, the party in whose favor costs are allowed shall have his action for the balance.

107.—No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

108.—No person shall be excused from answering any question put to him in any action, suit, or other proceeding in any Court, or before any Judge, Commissioner or other tribunal, touching or concerning any election or the conduct of any person thereat, or in relation thereto, on the ground of any privilege or on the ground that the answer to such question will tend to criminate such person; but no answer given by any person claiming to be excused on the ground of privilege or on the ground that such answer will tend to criminate himself, shall be used in any criminal proceeding against such person other than an indictment for perjury, if the Judge, Commissioner or President of the tribunal shall give to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid, and made full and true answers to the satisfaction of the Judge, Commissioner or Tribunal.

109.—Every Returning Officer and Deputy Returning Officer, from the time they shall respectively have taken the oath of office until the day after the closing of the elections, shall be a Conservator of the Peace, invested with all the powers appertaining to a Justice of the Peace.

110.—Such Returning Officer or Deputy Returning Officer may require the assistance of Justices of the Peace,

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Constables, or other persons present to aid him in maintaining peace and good order at such election, and may also, on a requisition, made in writing by any candidate or by his agent or by any two electors, swear in such Special Constables as he deems necessary.

111.—Such Returning Officer or Deputy Returning Officer may arrest, or cause to be arrested, by a verbal order, and placed in the custody of any Constables or other persons, any person disturbing the peace and good order at the election, and may cause such person to be imprisoned under an order signed by him until any period not later than the close of the poll.

112.—Except the Returning Officer or his Deputy, or the Poll Clerk or one of the Constables or Special Constable appointed by the Returning Officer or his Deputy for the orderly conduct of the election or poll, and the preservation of the public peace thereat, no person shall, during any part of the day upon which the poll is to remain open, arm himself with offensive weapons of any kind, as fire arms, swords, staves, bludgeons, or the like, unless called upon to do so by lawful authority.

113.—Every person offending against any of the provisions of section 112 of this chapter shall be deemed guilty of a misdemeanor, punishable by a fine not exceeding one hundred dollars, or imprisonment not exceeding one month, or by both, in the discretion of the Court having cognizance of such offence.

114.—Every person convicted of a battery committed during any day whereon any election or any poll for any

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election is begun, holden or proceeded with, within the distance of two miles of the place where such election or such poll is begun, holden or proceeded with, shall be deemed guilty of an aggravated assault, and shall be punished accordingly.

115.—No spirituous or fermented liquors or strong drinks shall be sold at any hotel, tavern, or licensed house, within the limits of any polling district during the whole of the polling day at any election for the House of Assembly under a penalty not exceeding fifty dollars for every offence.

116.—If any person unlawfully, either by violence or stealth, takes from any Returning Officer or Poll Clerk, or from any other person having the lawful custody thereof, or from its lawful place of deposit for the time being, or unlawfully or maliciously destroys, injures or obliterates, or causes to be wilfully destroyed, injured or obliterated, or makes, or causes to be made, any erasure, addition of names, or interlineation of names, in, to, or upon, or aids, counsels or assists in so taking, destroying, injuring or obliterating, or making any erasure, addition of names, or interlineation of names, in, to, or upon any list of voters or writ of election, or any return to a writ of election, or any report, certificate or affidavit, or any document or paper made, prepared or drawn out according to or for the purpose of meeting the requirements of this chapter, or any of them, every such offender shall be guilty of felony, and shall be liable to imprisonment, with or without hard labor, for a period not exceeding three years; and it shall not be necessary in any indictment for such offence to allege that the article in respect of which the offence is committed is of any value or the property of any person.

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117.—No person shall—

- (a.) Forge or counterfeit, or fraudulently alter, deface, or fraudulently destroy any ballot paper or the official marks thereon; or
- (b.) Without authority supply any ballot paper to any person; or
- (c.) Fraudulently put into any ballot box any paper other than the ballot paper which is authorized by law to be put in; or
- (d.) Fraudulently take out of the polling station any ballot paper; or
- (e.) Without due authority destroy, take, open, or otherwise interfere with any ballot box or packet of ballot papers then in use for the purposes of the election;
- (f.) No person shall attempt to commit an offence specified in this section.

Any contravention of this section shall be a misdemeanor, and any person found guilty thereof shall be punishable, if he be a Returning Officer, Deputy Returning Officer, or other Officer engaged at the election, by a fine not exceeding two thousand dollars, or by imprisonment for any term less than two years, with or without hard labor, in default of payment of such fine; and, if he be any other person, by a fine not exceeding one hundred dollars, or by imprisonment for any term not exceeding twelve months,

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with or without hard labor, in default of paying such a fine.

118.—Any Returning Officer, Deputy Returning Officer, Election Clerk or Poll Clerk, who refuses or neglects to perform any of the obligations or formalities required of him by this chapter, shall, for each such refusal or neglect, forfeit the sum of two hundred dollars to any persons suing for the same, together with all damages occasioned or sustained thereby, with full costs of suit.

119.—Every officer and clerk who is guilty of any wilful misfeasance or any wilful act or omission in violation of this chapter, shall forfeit to any person aggrieved by such misfeasance, act or omission, a sum not exceeding five hundred dollars, in addition to the amount of all actual damages thereby occasioned to such person.

120.—All damages, penalties and forfeitures (other than fines in cases of misdemeanor imposed by this Act) shall be recoverable with full costs of suit by any person who may sue for the same, by action of debt or information in any of the Superior Courts of this Colony; and in default of payment of the amount which the offender is condemned to pay, not being damages aforesaid, in a civil or *qui tam* action within the period fixed by the Court, the offender shall be imprisoned for any term less than two years unless such fine and costs be sooner paid.

121.—It shall be sufficient for the plaintiff in any action or suit given by this chapter to state in the declaration that the defendant is indebted to him in the sum of money thereby demanded, and to allege the particular offence for

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which the action or suit is brought, and that the defendant hath acted contrary to this chapter, without mentioning the writ of election or the return thereof.

122.—In any such civil action, suit or proceeding as last aforesaid, the parties to the same, and the husbands or wives of such parties respectively, shall be competent and compellable to give evidence to the same extent and subject to the same exceptions as in other civil suits; but such evidence shall not thereafter be used in any indictment or criminal proceeding under this chapter against the party or person giving it.

123.—In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers and marking instruments at an election, the property in such papers, boxes and instruments, may be stated to be in the Returning Officer at such election,

124.—It shall be lawful for any of the Superior Courts before which any criminal prosecution is instituted for any offence against the provisions of this chapter, to order payment by the defendant to the prosecutor of such costs and expenses as appear to the Court to have been reasonably incurred in and about the conduct of such prosecution; but the Court shall not make such order unless the prosecutor before or upon the finding of the indictment, or the granting of the information, enters into a recognizance, with two sufficient sureties in the sum of five hundred dollars, and to the satisfaction of the Court, to conduct the prosecution with effect and to pay the defendant his costs in case he be acquitted.

125.—In case of an indictment or information by a private prosecutor for any offence against the provisions of this

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chapter, if judgment be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information; such costs shall be taxed by the proper officer of the Court in which the judgment is given.

126.—It shall not be necessary on the trial of any suit or prosecution under this chapter, to produce the writ of election or the return thereof, or the authority of the Returning Officer founded upon any such writ of election, but general evidence of such facts shall be sufficient *prima facie* evidence.

127.—Every prosecution for a misdemeanor under this chapter, and every action, suit or proceeding for any pecuniary penalty given by this chapter to the person suing for the same, shall be commenced within the space of one year next after the act committed and not afterwards, unless the same be prevented by the withdrawal or absconding of the defendant out of the jurisdiction of the Court, and being commenced shall be proceeded with and carried on without delay.

128.—The Colonial Secretary may deliver certified copies of any writ, list of voters, returns, reports and other documents, except counterfoils, in his possession relating to any election; and such copies so certified shall be received and be held as *prima facie* evidence before any Court or Judge in this Colony on the trial of any controverted election or any prosecution or suit under this chapter.

129.—Any person before whom it is hereby required, or intimated by any form in the schedules to this chapter, that any oath be taken or any affirmation made in the manner herein provided, shall have power to administer the

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same, and shall do so gratuitously, and the Returning Officer at any election shall have the power to administer any oath or affirmation required with respect to such election by this chapter; and the Deputy Returning Officer may administer such oath or affirmation, except only such as may be required to be administered to the Returning Officer.

130.—Every person taking an oath or affirmation under this chapter, who wilfully swears or affirms falsely, shall be deemed guilty of perjury.

131.—For the better carrying out of any election of members of the House of Assembly, the Governor shall be authorized to prescribe or give by proclamation any orders or directions not inconsistent with the provisions of this chapter.

132.—No election shall be declared invalid by reason of a non-compliance with the rules contained in this chapter as to the taking of the poll or the counting of the votes, or by reason of any want of qualification in the person signing a nomination paper received by the Returning Officer under the provisions of this chapter, or of any mistake in the use of the forms contained in the schedules to this chapter, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this chapter, and that such non-compliance or mistake did not affect the result of the election.

133.—One copy of this chapter and of such instructions, approved by the Governor in Council, as may be required to carry out the elections according to the provisions of this chapter (with a copious alphabetical index prefixed) for the Returning Officer, and one for each of his Deputies, shall be

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transmitted with the writ of election to each Returning Officer.

PART IV.

CORRUPT AND ILLEGAL PRACTICES

134.—No candidate shall at any election, nor shall any other person acting on his behalf, either provide or furnish drink or other refreshment to any elector during such election, from nomination day to polling day, both inclusive or pay for, procure or engage to pay for any such drink or other refreshment, except as herein after provided.

135.—No candidate or any other person shall furnish or supply any ensign, standard or set of colors, or any other flag, to or for any person or persons whomsoever, with intent that the same should be carried or used in any district on the day of election, or within eight days before such day, or during the continuance of such election or the polling, by such person, or any other, as a party flag, to distinguish the bearer thereof and those who follow the same, as the supporters of such candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate; nor shall any person, for any reason, carry or use any such ensign, standard or set of colors, or other flag, as a party flag within such district on the day of any such election or polling, or within eight days before such day or during the continuance of such election.

136.—No candidate or any other person shall furnish or supply any ribbon, label, or like favor, to or for any person whomsoever, with intent that the same should be worn or used within such district on the day of such election. or

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polling, or within eight days before such day, or during the continuance of such election, by such person or any other, as a party badge to distinguish the wearer as the supporter of such candidate, or of the political or other opinions entertained, or supposed to be entertained by such candidate, or shall any person use or wear any ribbon, label, or other favor, as such badge, either on his person or affixed to any horse or vehicle, boat or vessel within such district on the day of any such election or polling, or within eight days before such day or during the continuance of such election.

137.—Every person offending against any of the provisions of the three next preceding sections shall be punishable by a fine not exceeding one hundred dollars, or imprisonment not exceeding three months, or by both, in the discretion of the Court.

138.—No spirituous or fermented liquors, or strong drink, shall be sold or given at any hotel, licensed house, or shop, or any other place whatsoever, within the limits of any polling district during the whole of the polling day, at any election, under a penalty of two hundred dollars for every offence; and the offender shall be subject to imprisonment not exceeding six months, at the discretion of the Judge or Court, in default of payment of such fine.

139.—Every candidate who corruptly, by himself, or by or with any person, or by any other ways or means on his behalf, or with his knowledge and consent, at any time either before or during any election, directly or indirectly gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expense incurred for any meat, drink, refreshment or provisions

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to or for any person in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any person to give or refrain from giving his vote at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of two hundred dollars to any person who shall sue for the same, with full costs of suit, or shall suffer imprisonment for a term not exceeding three months, in addition to any other penalty to which he may be liable therefor under any other provisions of this chapter, and the giving or causing to be given to any voter on the nomination day or day of polling, on account of such voter having voted or being about to vote, any meat, drink, or refreshment, or any money or ticket to enable such voter to procure refreshment, shall be deemed an unlawful act, and the person so offending shall, on summary conviction thereof before any Stipendiary Magistrate, forfeit the sum of ten dollars, and in default of payment shall be imprisoned for a period not exceeding ten days.

140.—And whereas doubts may arise as to whether the hiring of teams and vehicles to convey voters to and from the polls, and the paying of railway fares and other expenses of voters, be or be not according to law, it is declared and enacted that the hiring, or promising to pay, or paying for any horse, team, carriage, cab, or other vehicle, by any candidate, or by any person on his behalf, to convey any voter or voters to or from the poll, or to or from the neighborhood thereof, at any election, or the payment by any candidate, or by any person on his behalf, of the travelling and other expenses of any voter in going to or returning from any election, are or shall be unlawful acts, and the person so offending shall forfeit the sum of one hundred dollars to any

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person who shall sue for the same, and any voter hiring any horse, cab, cart, waggon, sleigh, carriage, or other conveyance, for any candidate, or for any agent of a candidate, for the purpose of conveying any voter or voters to or from the polling place or places, shall *ipso facto* be disqualified from voting at such election, and for every such offence shall forfeit the sum of one hundred dollars to any person suing for the same: Provided, that where the nature of a district is such that any electors residing therein are unable at an election for such district to reach their polling station without crossing the sea, or a branch or arm thereof, this chapter shall not prevent the provision of means for conveying such electors within the district by sea to and from their polling station, and the amount of payment for such means of conveyance may be in addition to the amount of personal expenses of a candidate under this chapter: And, provided also, that if it be necessary for such elector to be conveyed by sea, as aforesaid, such electors may, notwithstanding any provisions of this chapter, be provided with a reasonable amount of food and other refreshments, (except spirituous or fermented liquors or other strong drink), and the expenses of such conveyance by sea and of such food and refreshment shall be in addition to the amount of personal expenses of a candidate.

141.—Any person who shall at any election apply for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, shall be deemed to be guilty of personation. The offence of personation or of aiding, abetting, counselling or procuring the

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commission of the offence of personation by any person shall be a misdemeanor, and any person convicted thereof shall be punished by a fine not exceeding four hundred dollars, or imprisonment for a term not exceeding twelve months. It shall be the duty of the Returning Officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling or procuring the commission of the offence of personation by any person at the election for which he is Returning Officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the Court in the same manner in which Courts are empowered to allow the same in cases of misdemeanor.

142.—Every candidate who corruptly by himself or by or with any other person on his behalf, compels or induces, or endeavours to induce any person to personate any voter shall, in addition to any other punishment to which he may be liable for such offence, be liable to forfeit the sum of two hundred dollars to any person suing for the same, or shall suffer imprisonment, as aforesaid, for a term not exceeding three months.

143.—The following persons shall be deemed guilty of bribery and shall be punishable accordingly :—

- (1.) Every person who shall directly or indirectly, by himself or by any other person on his behalf, give or lend, or agree to give or lend, or shall offer, promise, or promise to procure, or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any

Election Law.

person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act, as aforesaid, on account of such voter having voted or refrained from voting at any election.

- (2.) Every person who shall directly or indirectly, by himself or by any other person, on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or to endeavour to procure any office, place, or employment to or for any voter, or to or for any other person, on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act, as aforesaid, on account of any voter having voted or refrained from voting at any election.
- (3.) Every person who shall directly or indirectly, by himself, or any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement, as aforesaid, to or for any person in order to induce such person to procure, or endeavour to procure, the return of any person to serve in the House of Assembly, or the vote of any voter at any election.
- (4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in the House of Assembly, or the vote of any voter at any election.

Election Law.

- (5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay, or cause to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.

And any person so offending shall be liable to forfeit the sum of four hundred dollars to any person who shall sue for the same, together with full costs of suit: Provided always, that the foregoing enactment shall not extend, or be construed to extend, to any money paid, or agreed to be paid, for or on account of any legal expenses *bona fide* incurred at or concerning any election.

144.—The following persons shall also be deemed guilty of bribery and shall be punishable accordingly :—

- (1.) Every voter who shall, before or during any election, directly or indirectly, by himself, or by any other person on his behalf, receive, agree, or contract for any money, gift, loan or valuable consideration, office, place, or employment for himself or for any other person, for voting, or agreeing to vote, or for refraining, or agreeing to refrain, from voting at any election.
- (2.) Every person who shall, after an election, directly or indirectly, by himself, or by any other person on his behalf, receive any money or valuable

Election Law.

consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

And any person so offending shall, on summary conviction before any Stipendiary Magistrate, be subject to a fine of forty dollars, and, in default of payment, shall be imprisoned for a period not exceeding one month.

145.—Every person who shall directly or indirectly by himself or by any other person on his behalf, make use of, or threaten to make use of any force, violence or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss, upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence, and shall be liable to forfeit the sum of two hundred dollars to any person who shall sue for the same, together with costs of suit.

146.—The offence of bribery, treating or undue influence, or any of such offences as defined by this chapter, or any other Act of the Legislature of this Colony, personation or the inducing any person to commit personation, or any wilful offence against any one of the eight next preceding

Election Law.

sections of this chapter, shall be corrupt practices within the meaning of the provisions of this chapter.

147.—No person shall be excused from answering any question put to him in any action, suit, or other proceeding in any Court, or before any Judge, Commissioner, or other tribunal, touching or concerning any election, or the conduct of any person thereat or in relation thereto, on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person as an offender under this chapter.

148.—Every executory, contract, or promise or undertaking between a candidate or his agent and an elector for the district, or in which the elector is beneficially interested in any way referring to, arising out of, or depending upon any election under this chapter, even for the payment of lawful expenses or the doing of some lawful act, shall be void in law; but this provision shall not enable any person to recover back any money paid for lawful expenses connected with such election.

149.—All persons who have any bills, charges or claims upon any candidate for or in respect of any election, shall send in such bills, charges or claims within two months after the day of the declaration of the election to the candidate or his agent or agents; otherwise such persons shall be barred of their right to recover such claims, any every or any part thereof: Provided always, that in the event of the death, within the said month, of any person claiming the amount of any such bill, charge or claim, the legal representative of such person shall send in such bill, charge or claim within one month of his obtaining probate or letters of administra-

Election Law.

tion, or of his becoming otherwise able to act as such legal representative, otherwise the right to recover such claim shall be barred as aforesaid; and provided also, that such bills, charges and claims shall and may be sent in and delivered to the candidate, or his agent or agents, if, and so long as during the said two months there shall, owing to death or legal incapacity, be no such agent; and provided also, that the agent shall not pay any such bill, charge or claim without the authority of the candidate as well as the approval of the agent.

150.—A detailed statement, verified by affidavit, of all election expenses incurred by or on behalf of any candidate, including such expected payments as aforesaid, shall, within three months after the election (or in any cases where by reason of the death of the creditor no bill has been sent in within such period of three months, then within one month after such bill has been sent in), be made out and signed by the candidate, or if there be more than one, by every candidate who has paid the same, and delivered, with the bills and vouchers relative thereto, to the Colonial Secretary; and any candidate who makes default in delivering to the Colonial Secretary the statements required by this section shall incur a penalty not exceeding ten dollars for every day during which he so makes default, and any candidate who wilfully furnishes to the Colonial Secretary any untrue statement shall be guilty of an offence against this chapter; and the said Colonial Secretary shall preserve all such bills and vouchers, and during the six months next after they shall have been delivered to him shall permit any voter to inspect the same on payment of a fee of twenty cents.

Election Law.

151.—No Returning Officer or Deputy Returning Officer for any polling district, nor any partner or clerk of either of them, shall act as agent for any candidate in the management or conduct of his election for such district, and if any Returning Officer or Deputy Returning Officer, or the partner or clerk of either of them, so acts, he shall be liable to a penalty not exceeding one hundred dollars, to be recovered in a summary manner before a Stipendiary Magistrate

152.—The words "personal expenses" as used in this chapter, with respect to the expenditure of any candidate in relation to the election at which he is a candidate, shall include the reasonable travelling expenses of such candidate and the reasonable expenses of his living at hotels or elsewhere, for the purpose of and in relation to such election.

153.—The pecuniary penalties hereby imposed for any offences under this chapter shall, unless otherwise provided, be recoverable by action or suit by any person who shall sue for the same, together with costs of suit.

154.—In case of any indictment or information by any private prosecutor for any offence against the provisions of this chapter, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs, to be taxed by the Court, sustained by the defendant by reason of such indictment or information, which costs shall be taxed by the Court.

155.—No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of six months next after such offence shall have been committed.

Election Law.

156.—In any action for the recovery of a penalty, or forfeiture under this chapter, it shall suffice for the plaintiff to declare that the defendant is indebted to him in the amount of the penalty or forfeiture, and to allege the particular offence for which the action is brought, and that the defendant hath acted therein contrary to this chapter, without mentioning the writ for the holding of the election or the return thereof.

PART V.

TRIAL OF CONTROVERTED ELECTIONS.

157.—A petition complaining of an undue return, or undue election of a member, or of no return, or double return, or of any unlawful act committed by any candidate not returned, by which such candidate aforesaid is alleged to have become disqualified to sit in the House of Assembly, may be presented to the Supreme Court by any one or more of the following persons :—

- (1.) Some person who voted or who had a right to vote at the election to which the petition relates ; or
- (2.) Some person claiming to have a right to be returned or elected at such election ; or
- (3.) Some person alleging himself to have been a candidate at such election.

158.—The following enactments are made with respect to the presentation of an election petition under this chapter :—

Election Law.

- (1.) The petition need not be in any particular form, but it must complain of the undue election, or return of a member, or that no return has been made, or that a double return has been made, or of matter contained in any special return made, or of some such unlawful act, as aforesaid, by any candidate not returned, and it must be signed by the petitioner, or all the petitioners if there are more than one.
- (2.) The petition shall be presented within two months after the return has been made to the Colonial Secretary of the member to whose election the petition relates, unless it questions the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within two months after the date of such payment.
- (3.) At the time of the presentation of the petition security for the payment of all costs, charges and expenses that may become payable by the petitioner shall be given by him, or on his behalf, and shall be by two approved sureties, or by a deposit of money with the Clerk of the Court to the amount of four hundred dollars; the Clerk of the Court shall give a receipt for such deposit, which shall be evidence of the sufficiency thereof.

Election Law.

159.—Notice of the presentation of a petition under this chapter, and of the security, accompanied with a copy of the petition, shall, if the respondent be resident within the Central District, within five days, and in other cases within ten days, or such further time as the Court shall allow from the filing of the petition, be served on the respondent or respondents: Provided that substituted service may be made by leave of the Court, as prescribed by section 6, of chapter 20 of the Consolidated Statutes, (first series), title IV., entitled "Of Pleading and Practice."

160.—Within five days after service of the petition and notice, the respondent may file in the office of the Clerk of the Court any preliminary objection or grounds of insufficiency which he may have to urge against the petition or petitioner, or against any further proceeding thereon, and shall in such case at the same time serve a copy thereof upon the petitioner. If service be made without the Central District, the respondent may present, by filing as aforesaid, such objections and grounds within ten days, or such further time as may be allowed by the Court. The Court shall hear the parties on such objections and grounds and shall decide the same in a summary manner.

161.—Within five days after the decision upon the preliminary objections, if presented as aforesaid, and upon the hearing thereof, if disallowed, or on the expiration of the time for presenting the same, if none be presented, the respondent may file a written answer to the petition and serve a copy thereof upon the petitioner; but whether such answer be or be not filed the petition shall be held to be at issue after the expiration of the time for filing the same, and the

Election Law.

Court may at any time thereafter, upon the application of either party, fix some convenient time for the trial of the petition.

162.—The clerk of the Court shall keep a docket of all petitions presented under this chapter, and at issue, placing them in the order in which they were presented, which shall be open to inspection by any person making application, and such petitions shall be tried in the order in which they stand on the list.

163.—Every election petition shall be tried without a jury by one of the Judges of the Supreme Court, in rotation, unless from illness or the condition of judicial business such a course may be impracticable: Provided that if the Judge before whom proceedings were commenced cannot continue the trial thereof, the same may be continued before another Judge, who may use the evidence and proceedings previously had, or re-hear and review the same at his discretion.

164.—Every election petition shall be tried at Saint John's: Provided that the Court may, for sufficient cause, transfer the same to any place where the Supreme Court on Circuit shall sit, in the same manner and subject to such terms, in the discretion of the Court, as actions at law may now or hereafter be transferred.

165.—Notice of the time and place at which election petitions will be tried shall be given not less than ten days before that on which the trial is to take place.

166.—The Judge at the trial, may adjourn the same from time to time as to him may seem necessary to the ends of justice.

Election Law.

167.—At the conclusion of the trial the Judge shall determine whether the member whose election or return is complained of, or any and what other person was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the Governor, appending thereto a copy of the notes of the evidence, and the determination thus certified shall be final to all intents and purposes.

168.—Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the Judge shall, in addition to such certificate and at the same time report in writing to the Governor, as follows:—

- (1) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge or consent of any candidate at such election, and the nature of such corrupt practice.
- (2) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice.
- (3) Whether any corrupt practices have, or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.

169.—When it is found by the report of the Judge upon an election petition under this chapter that bribery, treating or undue influence has been committed by or with the knowledge or consent of any candidate at the election complained of, such candidate shall be deemed to be personally guilty of

Election Law.

bribery or treating, as the case may be, at such election, and his election, if he has been elected, shall be void, and he shall be incapable of again being a candidate for election during the existence of that Assembly to which he claimed to have been elected.

170.—When, upon the application of any party to an election petition duly made to the Judge, it appears to such Judge that the case raised by the petition can be conveniently stated as a special case, such Judge may direct the same to be so stated, and any such special case shall be heard before such Judge, who shall thereupon give such judgment as to justice may appertain, and, in case the decision be final, the Judge shall certify to the Governor his decision on such special case in the manner and time specified in section 167 of this chapter.

171.—Where, upon the application of any party to a petition, it appears to the Judge that any question of law as to the admissibility of evidence or otherwise requires further consideration by the Supreme Court, such Judge may reserve such question for the opinion of the Supreme Court, which for the purposes of this chapter, shall be two or more Judges, either in term or vacation, and may postpone the granting of a certificate until the determination of such question.

172.—Unless the Judge otherwise directs, any charge of a corrupt practice may be gone into and evidence in relation thereto received before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.

173.—The Governor shall, at the earliest practicable moment after he receives the certificate and report (if any)

Election Law.

of the Court or Judge, give the necessary directions, and adopt all the proceedings necessary for confirming or altering the return, or for the issuing of a new writ for a new election, or for otherwise carrying the determination into effect.

174.—Two or more candidates may be made respondents to the same petition, and their cases may, for the sake of convenience, be tried at the same time; but, for the purposes of this chapter, such petition shall be deemed a separate petition against each respondent.

175.—Where more petitions than one are presented relating to the same election or return, all such petitions may be dealt with by the Court, on the application of the respondent, in the same manner as actions at *nisi prius* may now or hereafter be consolidated according to the practice of the Supreme Court.

176.—The Judges of the Supreme Court may, from time to time, make, revoke, alter and amend general rules and regulations for the effectual execution of this chapter, and the regulation of the practice and procedure under this chapter, which rules and regulations shall, while in force, be deemed to be part of and incorporated with this chapter.

177.—In matters not by this chapter, or by the rules and regulations under section 176 of this chapter, provided for, the principles, practice and rules respecting the trial of Controverted Elections in England, shall apply and be deemed to be incorporated in the enactments herein made so far as the same shall be deemed to be applicable.

Election Law.

178.—An election petition may be withdrawn by leave of the Court on application of the petitioners, subject to such terms as the Court may direct, or may, upon the application of the respondent and by leave of the Court, be dismissed after two months from the filing thereof for want of prosecution in like manner as Bills in Equity may be dismissed for the same cause and subject to the like terms.

179.—When there are more petitioners than one no application to withdraw a petition shall be made, except with the consent of all the petitioners.

180.—If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent, unless the Court otherwise order.

181.—An election petition shall be abated in the following cases:—

- (1) The death, at any time before judgment of a sole petitioner, either candidate or otherwise.
- (2) The death of a respondent.
- (3) If a second respondent gives notice to the Court, supported by affidavit, of his intention to withdraw his opposition to the pending petition, and then upon terms to be imposed by the Court.

182.—All costs, charges and expenses paid or incurred by any party to an election petition shall be taxed and allowed by the Chief Clerk of the Supreme Court according to the scale of costs in Equity, and may be recovered by execution or upon a rule of Court for the payment of the sum taxed, as upon an ordinary rule for the payment of money.

Election Law.

183.—In addition to the fees payable under the scale of costs in Equity, the master or clerk shall be entitled to receive the following fees :—

Taxing recognizance..... \$2.50
 Taxing costs..... \$1.50 to \$5.00,
 according to the length and importance of the case.

184.—The Court shall have all and the same powers as to summoning and compelling the attendance of witnesses and process and punishment for contempt as the Supreme Court. The general law of evidence and pleading shall in all particulars govern the proceedings and trial upon an election petition.

185.—A Judge trying an election petition under this chapter shall be deemed to be a Judge sitting as the Supreme Court, under chapter 9 of the Consolidated Statutes, (First Series), and Acts in amendment thereof, and the Court shall be a Court of Record.

186.—Upon the trial of an election petition the presiding Judge shall be paid the sum of one hundred dollars out of the funds of the Colony.

187.—When it is not convenient for any Deputy Returning Officer to take the oaths required by law to be taken before the Returning Officer or a Justice of the Peace, it shall be lawful for such Deputy Returning Officer to take such oath before another Deputy Returning Officer or before a Poll Clerk, and all Deputy Returning Officers and Poll Clerks are hereby respectively empowered to administer such oaths when required and necessary

*Election Law.***SCHEDULES.****A.**

LIST OF ELECTORS.

District of }

The List of Persons entitled to Vote in the Election of a Member (or Members) for the District of

No.	Christian Name and Surname of each Elector.	Place of Abode.	Qualification.
	1 Adams, John	Prescott Street, St. John's.	21 years and upwards.

B.

NOTICE TO BE ATTACHED TO OR PUBLISHED WITH THE LIST
OF ELECTORS.

I hereby give notice that the Justice of the Peace for this district will, on or before the _____ day of _____, in this year, make out a list of all persons entitled to vote in the election of a members (or members) to represent the district of _____ in the House of Assembly. And every person so entitled and whose name is not included in the above list is hereby required to deliver or transmit to me, on or before the _____ day of _____ in this year, a claim in writing, containing his christian name and surname, the name of the place where he resided, his age, place of birth, and the name of his father,

A. B.

*Election Law.***C**

Notice of Claim to be given to the Magistrate or person making the List,

I hereby give you notice that I claim to be inserted in the list of electors for the district of _____, and that the particulars of my qualification are stated below.

Dated at _____ the _____ day of _____ &c.

To Mr. E. F., or G. H., Esq.

C. D.

(Here state particulars of qualification.)

D

Notice to be given to the Voter objected to by the Party objecting.

I hereby give notice that I object to your right of being registered as an elector for the district of _____

Dated at _____ the _____ day of _____ &c.

J. K.

E

LIST OF ELECTORS.

District of _____ }

The List of Persons entitled to Vote in the Election of a Member (or Members) for the District of _____.

No.	Christian Name and Surname of each Elector.	Place of Abode.	Qualification.
1	Ayre, Andrew	Prescott Street, St. John's.	21 years and upwards.

*Election Law.***F**

ELECTION WRIT.

*VICTORIA, by the Grace of GOD, of the
United Kingdom of Great Britain and
Ireland, Queen, Defender of the Faith.*

To

, Esquire, Greeting:

Whereas by Our Proclamation, bearing date the
day of in the year of Our reign, We have made
known to all Our loving subjects within Our Island of New-
foundland Our intention to issue Our Writs for a General
Election of Members to serve in the General Assembly of Our
said Island, (omit these words except in case of a General
Election).

We command you that, notice of the time and place of
election being duly given, you do cause election to be made
according to law of a member (or as the case may be) to serve
in the House of Assembly of Newfoundland, for the Electoral
District of , (except in the case of a General Election,
insert here "in the place of , deceased." or otherwise
stating the cause of vacancy), and that you do cause the
nomination] of candidates at such election to be held on the
day of ; and in case more candidates be nomi-
nated than the number required to be elected, that you do
hold a poll on the day of , and that you do cause
the name (or names) of such candidate (or candidates) when
so elected, whether he (or they) be present or absent, to be
certified to our Colonial Secretary as by law directed.

Witness Our trusty and well-beloved
Governor and Commander-in-Chief in and
over Our said Island and its Dependencies,
at St. John's, in Our said Island, the
day of , A. D. , in the
year of Our reign.

(Signature), A. B.,
Colonial Secretary.

Election Law.

INDORSEMENT.

Received the within Writ on the day of , 18 .
 (Signature), A. B., Returning Officer.

G

OATH OF THE RETURNING OFFICER.

I, the undersigned, A. B., Returning Officer for the Electoral District of , solemnly swear (or if he be one of the persons permitted by law to affirm in civil cases, solemnly affirm), that I am legally qualified according to law to act as Returning Officer for the said Electoral District of , and that I will act faithfully in that capacity, without partiality, fear, favor, or affection. So help me God.

(Signature), A. B.,
 Returning Officer.

CERTIFICATE OF RETURNING OFFICER HAVING TAKEN OATH
 OF OFFICE.

I, the undersigned, hereby certify that on the day of the month of , 18 , A. B., the Returning Officer for the Electoral District of , took and subscribed before me the oath (or affirmation) of office in such case required of a Returning Officer by section 3 of "Election Act, 1889.

(Signature), C. D.,
 Justice of the Peace.

H

COMMISSION OF AN ELECTION CLERK.

To E. F., (set forth his legal addition and residence).

Know you, that in my capacity of Returning Officer for the Electoral District of , I have appointed and do here-

Election Law.

by appoint you to be my Election Clerk, to act in that capacity according to law at the approaching election for the said Electoral District of _____, which election will be opened by me on the _____ day of the month of _____, 18 .

Given under my hand, this _____ day of _____, in the year 18 _____

(Signature), A. B.,
Returning Officer.

I**OATH OF THE ELECTION CLERK.**

I, the undersigned, E. F., appointed Election Clerk for the Electoral District of _____, solemnly swear (or if he be one of the persons permitted by law to affirm in civil cases, solemnly affirm) that I will act faithfully in my said capacity as Election Clerk, and also in that of Returning Officer, if required to act as such, according to law, without partiality, fear, favor, or affection. So help me God.

(Signature), E. F.,
Election Clerk.

**CERTIFICATE OF THE ELECTION CLERK HAVING TAKEN THE
OATH OF OFFICE.**

I, the undersigned, hereby certify that on the _____ day of _____, 18 _____, E. F., Election Clerk for the Electoral District of _____, took and subscribed before me the oath (or affirmation) of office required in such case of an Election Clerk by section 40 of the "Election Act, 1889."

In testimony whereof, I have delivered to him this certificate under my hand.

(Signature) C. D.,
Justice of the Peace.

*Election Law.***J.**

NOTICE BY RETURNING OFFICER.

NOTICE.

Electoral District of , to wit.

Public notice is hereby given to the electors of the Electoral District aforesaid that in obedience to her Majesty's writ to me directed, and bearing the date the day of , 18 , I require the presence of the said electors at (describe place), in the district of , on the day of the month of , from ten a. m. until two of the clock in the afternoon, for the purpose of nominating a person (or persons, as the case may be) to represent them in the General Assembly of Newfoundland; and that in case a poll be demanded and allowed in the manner by law prescribed, such poll will be opened on the day of the month of , in the year 18 , from the hour of eight in the morning till four of the clock in the afternoon, (or in the case of the Electoral District of St. John's, till eight o'clock in the evening), in each of the polling districts fixed by the proclamation of His Excellency the Governor, dated the day of the month of , in the year 18 .

And further, that at (name the place) I shall open the ballot boxes, count the votes given for the several candidates, and return as elected the one (or as the case may be) having the majority of votes; of which all persons are hereby required to take notice and to govern themselves accordingly.

Given under my hand, at , this day
of , in the year 18 .
(Signature), A. B.,
Returning Officer.

K.

NOMINATION PAPER, &c.

We, the undersigned electors of the Electoral District of
 , hereby nominate (names, residence and additions or

Election Law.

descriptions of person or persons nominated, and, if the candidate be absent from the place of nomination, add "who is absent from the place of nomination") as a candidate at the election now about to be held of a member to represent the said Electoral District in the House of Assembly of Newfoundland,

Witness our hands, at _____, in the said Electoral District, this _____ day of _____, 18 _____.

Signed by the said electors, in the presence of _____, of _____, [additions].
[Signatures, with residence and additions].

CONSENT TO NOMINATION IF CANDIDATE BE PRESENT.

I, the said _____, nominated in the foregoing nomination paper, hereby consent to such nomination.

Witness my hand, at _____, this _____ day of _____, 18 _____.

Signed by the said nominee, in presence of _____ of _____, (additions).

(Signature).

L

OATH OF THE ATTESTATION OF THE NOMINATION PAPER.

I, A. B., of _____, (additions,) solemnly swear (or if he be one of the persons permitted by law to affirm in civil cases, solemnly affirm) that I know (mentioning the names of the signers known to him) and that they are duly qualified as electors of the Electoral District of _____, to vote at an election of a member to serve in the House of Assembly of Newfoundland, and that they respectively signed the foregoing (or within) nomination paper in my presence; and further (if the case be so) that the said _____ thereby nomi-

Election Law.

nated as a candidate, signed his consent to the nomination in my presence, (or is absent from the place of nomination and has consented to his nomination, as the case may be.)

(Signature), A. B.

Sworn (or affirmed) before me,
at this day
of 18 .

C. D.,
Justice of the Peace (or Returning Officer).

The forms in this schedule may be varied according to circumstances, the intention of the 48th section of this chapter being complied with; and the assent of the candidate may be sworn to by a separate elector, if the facts require it to be so.

M 1.**QUALIFICATION IN INCOME OF CANDIDATE PRESENT.**

I, A. B., (name and addition of the candidate) do swear (or affirm) that I have resided in the Island of Newfoundland for the period of two years next preceding the day of this election of a member (or members) of the House of Assembly for the district of [naming the district]. That I truly and *bona fide* am possessed of a net annual income of four hundred and eighty dollars, and am otherwise qualified according to the law of this Island to serve in the House of Assembly of Newfoundland, and that my said income arises from and consists of [here specify the source from which the income is derived].

A. B.,
[Signature of Candidate];

Sworn [or affirmed] before me,
at , &c.

C. D.,
Returning Officer.



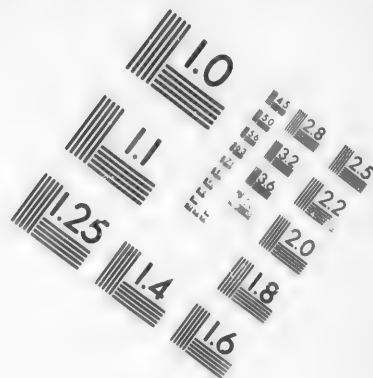
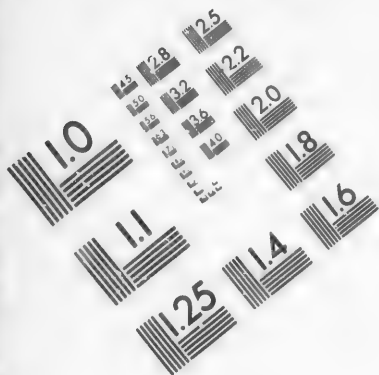
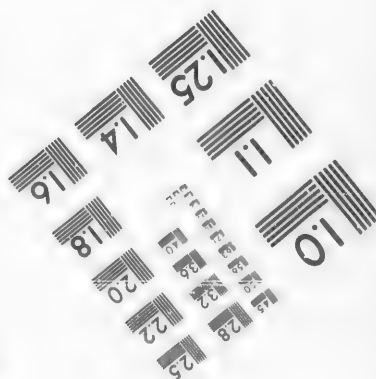
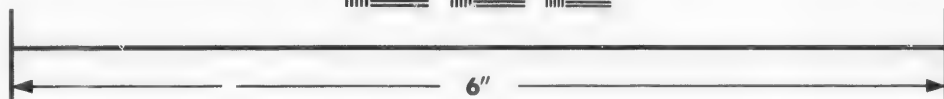
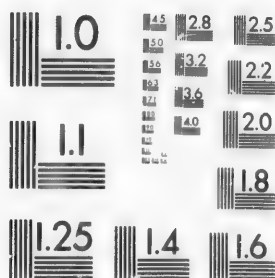


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

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2.0 2.2
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*Election Law.***M 2.**

QUALIFICATION IN PROPERTY OF CANDIDATE PRESENT.

I, A. B., of [name and addition of the candidate] do swear [or affirm] that I have resided in the Island of Newfoundland for a period of two years next preceding the day of this election of a member [or members] of the House of Assembly for the district of [naming the district], and that I truly and *bona fide* am possessed of property, clear of all incumbrances, of two thousand four hundred dollars, in amount or value, and that I am otherwise qualified according to the law of this Island, to serve in the House of Assembly of this Island; and that my said property consists of [here specify the character and description of the property and where situate].

A. B.,

[Signature of Candidate.]

Sworn [or affirmed] before
me, at

C. D.

Returning Officer.

M 3.

QUALIFICATION IN INCOME OF CANDIDATE ABSENT.

We, A. B. and C. D., of _____, [names and additions of electors] do swear [or affirm] that [name of candidate] is truly and *bona fide* possessed of a net annual income of four hundred and eighty dollars, and is otherwise qualified according to the law of this Island, to serve in the House of Assembly of Newfoundland; and that his said income consists of [here state the source from which the income is derived].

A. B.,

C. D.,

[Signature of Electors.]

Sworn [or affirmed] before me, at

C. D.,

Stipendiary Magistrate [or Justice of the
Peace, as the case may be].

*Election Law.***M 4.****QUALIFICATION IN PROPERTY OF CANDIDATE ABSENT.**

We, A. B. and C. D., of _____, [names and additions of electors] do swear [or affirm] that [name of candidate] is truly and *bona fide* possessed of property clear of all incumbrances of two thousand four hundred dollars in amount or value, and is otherwise qualified, according to the law of this Island, to serve in the House of Assembly of Newfoundland, and that his said property consists of [here state the source from which the property is derived].

A. B.,

C. D.,

[Signature of Electors].

Sworn [or affirmed] before me, at

C. D.,

Stipendiary Magistrate [or Justice of the Peace,
as the case may be].

The forms in schedule M 3 and M 4, may be varied when the candidate is absent, so that the qualification may be sworn to or affirmed by the candidate, as provided in section 50, subsection [b] of this chapter.

N.**RETURN TO WRIT WHEN ELECTION NOT CONTESTED.**

I hereby certify that the member (or members) elected for the Electoral District of _____, in pursuance of the within Writ is (or are) A. B., of _____, no other candidate having been nominated, (or the other candidate or candidates having withdrawn, as the case may be).

(Signature).

E. F.,

Returning Officer.

*Election Law.***O.**

NOTICE OF POLL AND CANDIDATES.

Electoral District of _____, to wit.

Public notice is hereby given to the electors of the Electoral District aforesaid, that a Poll has been demanded at the election now pending for the same, and that I have granted such Poll: And that the persons duly nominated as candidates at the said election, and for whom only votes will be received, are—

Here insert the names and descriptions of the candidates, alphabetically arranged, in the same manner as they appear in the ballot papers, viz:—

1. DOE.

John Doe, of St. John's,
Gentleman.

2. ROE.

Richard Roe, of Carbonear,
Merchant.

3. STYLES.

Geoffrey Styles, of Fogo,
Fisherman.

4. STILES.

John Stiles, of Twillingate,
Physician.

Of which all persons are hereby required to take notice and to govern themselves accordingly.

Given under my hand, at _____, the _____ day
of _____, 18 ____.

A. B., Returning Officer.

Election Law.

Printed directions to the voters in the following form must be appended to this notice, and must in all cases be posted up with it:—

DIRECTIONS FOR THE GUIDANCE OF ELECTORS IN VOTING.

Each elector, on entering the room where the poll is to be held, shall declare his name, surname and addition.

After so doing he shall receive a ballot paper in the above form.

Each elector, if required by the Deputy Returning Officer, the Poll Clerk, one of the candidate, or one of their agents, shall, before receiving his ballot paper, take an oath of qualification.

The voter is to vote only for (here insert number of candidates).

After receiving his ballot paper the voter shall go into one of the compartments, and, with a pencil there provided, place a cross in the division containing the name or names of the candidate or candidates for whom he intends to vote, thus **X**.

The voter will then fold the ballot paper, so as to show a portion of the back only, with the initials of the Deputy Returning Officer, and shall hand it so folded up to the Deputy Returning Officer, and the Deputy Returning Officer shall, without unfolding it, ascertain that it is the ballot paper which he furnished to the elector, and then immediately place it in the ballot box.

If a voter inadvertently spoils a ballot paper he may return it to the Deputy Returning Officer, who will give him another.

If the voter votes for more candidates than he is entitled to vote for, or places any mark on the ballot paper by which he can afterwards be identified, his vote will be void and will not be counted.

If a voter takes a ballot or ballot paper out of the polling station, or fraudulently puts any other paper into the ballot box than the paper given him by the Deputy Returning Officer, he will be subject to be punished by fine of five hundred dollars, or by imprisonment for a time not exceeding six months, with or without hard labor.

*Election Law.***P.**

OATH OF CANDIDATE WITHDRAWING FROM NOMINATION.

I, A. B., of _____, duly nominated as a candidate for election as a member of the House of Assembly, hereby withdraw the said nomination, and do solemnly swear [or affirm] that I do so freely and voluntarily, and that I have not received, directly or indirectly, from any person or body, any gift, loan, offer, promise, or any promise to procure, or endeavor to procure, any money, office, place or appointment, or other consideration for such withdrawal.

A. B.,
Candidate.

Sworn (or affirmed) before me,
at _____, this _____ day
of _____, 18 ____.

C. D.,
Returning Officer [or Justice of the Peace].

Q.

COMMISSION OF A DEPUTY RETURNING OFFICER.

To G. H., (insert his legal addition and residence).

Know you, that in my capacity as Returning Officer for the Electoral District of _____, I have appointed and do hereby appoint you to be Deputy Returning Officer for the polling station, number _____ at _____ in the said Electoral District of _____, there to take the votes of the electors by ballot according to law at the polling station to be by you opened and kept for that purpose; and you are hereby authorised and required to open and hold the poll of such election for the said polling station on the _____ day of _____, at eight o'clock in the forenoon, at [here describe particularly the place in which the poll is to be held], and there to keep the said poll open during the hours prescribed by law, and to take at the said polling place by ballot, in the manner by law pre-

Election Law.

vided, the votes of the electors voting at the said polling place, and, after performing the other duties required of you by law, to return to me forthwith the ballot boxes, sealed with your seal, and unused and spoilt ballot papers, voters' list and other documents required by law, together with this commission.

Given under my hand, at _____, this _____ day
of _____, in the year 18 ____.
(Signature), A. B.,
Returning Officer.

II.

OATH OF DEPUTY RETURNING OFFICER.

I, the undersigned G. H., appointed Deputy Returning Officer for the Polling Station No. _____, at _____ in the Electoral District of _____, solemnly swear (or being one of the persons permitted by law to affirm in civil cases, solemnly affirm), that I will act faithfully in my said capacity of Deputy Returning Officer, without partiality, fear, favor or affection. So help me God.

(Signature), G. H.
Deputy Returning Officer.

CERTIFICATE OF A DEPUTY RETURNING OFFICER HAVING
TAKEN THE OATH OF OFFICE.

I, the undersigned, hereby certify that on the _____ day of the month of _____, G. H., Deputy Returning Officer for the polling station No. _____, at _____ in the Electoral District of _____, took and subscribed the oath (or affirmation) of office required in such case of a Deputy Returning Officer by section 55 of the "Election Act, 1839."

In testimony whereof I have delivered to him this certificate under my hand.

(Signature), E. F., Justice of the Peace.
Or, A. B., Returning Officer.

*Election Law.***S.****FORM OF BALLOT PAPER.****Election for the Electoral District.****1. DOE.**

John Doe, of St. John's,
Gentleman.

2. ROE.

Richard Roe, of Carbonear,
Merchant.

3. STYLES.

Geoffrey Styles, of Fogo,
Fisherman.

4. STILES.

John Stiles, of Twillingate,
Physician.

T.**COMMISSION OF A POLL CLERK.**

To I. J., (insert his legal addition and residence).

Know you, that in my capacity of Deputy Returning Officer for the polling station No. , at in the Electoral District of , I have appointed and do hereby appoint you to be Poll Clerk for the said polling station.

Given under my hand, at , this day
of , in the year 18 .

(Signature), G. H.,
Deputy Returning Officer

Election Law.

U.

OATH OF POLL CLERK.

I, the undersigned J. P., appointed Poll Clerk for the polling station No. , at , in the Electoral District of , do solemnly swear (or affirm) that I will act faithfully in my capacity of Poll Clerk and also of Deputy Returning Officer, if required to act as such, according to law, without partiality, fear, favor or affection.

J. P., Poll Clerk.

Sworn (or affirmed) before me, at day of , A. D. .

A. B., Returning Officer.

C. D., Deputy Returning Officer.

V.

COMMISSION OF A POLL CLERK BY A POLL CLERK ACTING AS
DEPUTY RETURNING OFFICER.

To , of (insert his residence and legal addition).

Know you, that in my capacity of Acting Deputy Returning Officer for the Polling Station No. , at , in the Electoral District of , in consequence of the decease (or incapacity to act, or as the case may be) of the Deputy Returning Officer for the said Polling Station, whose Poll Clerk I was, I have appointed, and do hereby appoint you to be Poll Clerk for the said Polling Station No. , in the said Electoral District.

Given under my hand at , this day
of , in the year 18 .

POLL CLERK ACTING AS DEPUTY RETURNING OFFICER.

The oath and certificate of its having been taken, will be the same as in the case of a Poll Clerk appointed by the Deputy Returning Officer.

*Election Law.***W.**

OATH OF CANDIDATE'S AGENT.

I, A. B., of _____, do solemnly swear (or affirm) that I have been appointed by _____, one of the candidates for election, for the Electoral District of _____, to act as his agent.
(Signature), A. B.

Sworn (or approved) before me, this _____ day of _____, 18 ____.
C. D., Returning Officer.

X.

FORM OF STATUTORY DECLARATION OF SECRECY.

I solemnly promise and swear (or affirm) that I will not, at the election for _____, do anything forbidden by Section 67 of "The Election Act, 1889," which has been read to me. So help me God.

A. B., Returning Officer, (or as the case may be).

Sworn (or affirmed) before me, at _____,
this _____ day of _____, 18 ____.
C. D., Justice of the Peace (or as the case may be.)

A A.OATH OF IDENTITY BY ELECTOR AFTER ANOTHER HAS
VOTED IN HIS NAME.

I solemnly swear (or affirm) that I am A. B., of _____, whose name is entered on the List of Electors (or Supplementary list, as the case may be) and that I am qualified by law to vote at this election.

(Signature), A. B.

Sworn (or affirmed) before me, at _____ this day of 18 ____.
(Signature), C. D., Deputy Returning Officer.

Election Law.

BB.

OATH OF ELECTOR OF INCAPACITY TO VOTE.

I, A. B., solemnly swear (or : affirm) that I am unable to read and to understand the ballot papers so as to mark the same, [or that I am incapacitated by physical causes, as the cases may be], from voting, without the assistance of the Deputy Returning Officer.

NOTE.--This oath is to be administered to each elector wishing his ballot paper marked by the Deputy Returning Officer, but no certificate need be signed by the elector.

CC.

Form of Voters' List.

[illegible]

*Election Law.***D D.****OATH OF THE DEPUTY RETURNING OFFICER AFTER THE CLOSING OF THE POLL.**

I, the undersigned Deputy Returning Officer for the polling station No. , at , in the Electoral District of , do solemnly swear (or if he be one of the persons permitted by law to affirm in civil cases, do solemnly affirm) that to the best of my knowledge and belief the voters' list kept for the said polling station under my direction hath been so kept correctly; and that the total number of votes polled in the said list is , and that, to the best of my knowledge and belief it contains a true and exact record of the votes given at the polling station in the said polling district as the said votes were taken thereat; and that the ballot boxes, packets of ballot papers, and other documents required by law to be returned by me to the Returning Officer, have been faithfully and truly prepared by me as directed by section 87 of "Election Act, 1889," for delivery to the legally appointed messenger, to the end that they may be transmitted to the Returning Officer according to law.

[Signature],

G. H., Deputy Returning Officer.

Sworn before me, at

, this day of , 18 .

[Signature],

X. Y., Justice of the Peace.

Or, A. B., Returning Officer.

E E.**OATH OF THE POLL CLERK AFTER THE CLOSING OF THE POLL.**

I, the undersigned Poll Clerk for the polling station No. , at , in the Electoral District of , do solemnly swear that the "voters' list" in and for the said [as the case may be], under the direction of G. H., who has acted as Deputy Returning Officer therein, has been so kept by me under his direction, as aforesaid, correctly and to the best of my skill and judgment; that the total number of votes polled in the

Election Law.

said list is _____, and that to the best of my knowledge and belief it contains a true and exact record of the votes given at the said polling station as the said votes were taken at the said poll by the said Deputy Returning Officer.

J. J., Poll Clerk.

Sworn before me, at _____, this _____ day of _____, 18 ____.
 X. Y., Justice of the Peace.
 A. B., Returning Officer.
 C. H., Deputy Returning Officer.

F F.

APPOINTMENT OF MESSENGER TO COLLECT BALLOT BOXES.

To the Deputy Returning Officer at Station No. _____, at _____, in the Electoral District of _____.

The bearer "A. B.", has been appointed by me, under the provisions of section 89 of the "Election Act, 1889," to collect the ballot boxes and packets of papers which you are required by section 87 to deliver after the close of the poll to a messenger appointed by me.

C. O., Returning Officer.

OATH TO BE TAKEN BY MESSENGER BEFORE RECEIVING BALLOT BOXES AND PACKETS OF PAPERS FROM ANY DEPUTY RETURNING OFFICER.

I, A. B., of _____, solemnly swear (or affirm) that I am the legally appointed messenger of C. O., Returning Officer for the Electoral District of _____, for the purpose of collecting ballot boxes and packets of papers from the Deputy Returning Officer.

A. B., Messenger.

Sworn (or affirmed) before me, at _____, this _____ day of _____, 18 ____.

E. F., Deputy Returning Officer.

*Election Law.***G G.****OATH OF MESSENGER SENT TO COLLECT THE BALLOT BOXES OR
TO DELIVER THEM TO THE COLONIAL SECRETARY.**

I, A. B., of _____, Messenger appointed by C. D.,
Returning Officer for the Electoral District of _____, do
solemnly swear that I will, with all diligence, convey the
several Ballot Boxes and parcels delivered into my possession
by the several Deputy Returning Officers, [or by the "Return-
ing Officer," as the case may be], to the said Returning Officer
[or to the Colonial Secretary, as the case may be]; and that I
will not open or tamper with nor permit any other person to
open or tamper with, any of the said Ballot Boxes and parcels.

Sworn before me, at _____, this _____ day of _____,
in the year 18 _____.

X. Y., Justice of the Peace.
Or, A. B., Returning Officer.
Or, G. H., Deputy Returning Officer.

H H.**OATH OF MESSENGER ON DELIVERY OF BALLOT BOXES.**

I, A. B., of _____, messenger appointed by C. D.,
Returning Officer for the Electoral District of _____, do
solemnly swear that the several ballot boxes and parcels
delivered to me by the Deputy Returning Officers, [or Return-
ing Officer, as the case may be,] and now delivered by me to
the Returning Officer or Colonial Secretary [as the case may
be] have not been opened or tampered with by me nor any
other person with my knowledge or consent, and that to the
best of my knowledge they are in the same state as they were
in when they came into my possession.

A. B., Messenger.
Sworn before me, at _____, this _____ day of _____, in
the year 18 _____.

X. Y., Justice of the Peace.
Or, A. B., Returning Officer.
Or, G. H., Deputy Returning Officer.

II.

CERTIFICATE OF DEPUTY RETURNING OFFICER AND POLL
CLERK VERIFYING COPY OF "VOTERS' LIST."

We, A. B. and C. D., Deputy Returning Officer and Poll Clerk,
respectively, of Polling station No. , at
in the Electoral District of , do solemnly swear (or affirm),
that the accompanying copy of the voters' list kept at the said polling
station is correct in every particular, and contains a faithful record of
the names of electors applying for ballot papers at the said election.

A. B., Returning Officer.
C. D., Poll Clerk.

Sworn (or affirmed) before me, at , this day
of , A. D., 18 .

E. F.,
Stipendiary Magistrate (or Justice of the Peace
or Returning Officer, as the case may be).

J J.

RETURNING OFFICER'S STATEMENT AT CONCLUSION OF
COUNTING.

1.—Number of ballot papers sent to D. R. O.....	490
2.—Number of ballot papers said to be in ballot boxes.....	350
3.—Number of ballot papers found in ballot boxes.....	345
4.—Number of unused and spoilt ballot papers said to be returned..	150
5.—Number of unused and spoilt ballot papers actually returned..	145
6.—Number of ballot papers accepted when counting.....	325
7.—Number of ballot papers rejected when counting.....	20
8.—Votes counted for John Doe.....	250
9.—Votes counted for Richard Roe.....	50
10.—Votes counted for Geoffrey Styles.....	75
11.—Votes counted for John Stiles.....	275

I, A. B., Returning Officer for the Electoral District of
 , do solemnly swear [or affirm] that the above statement
 is correct in every particular.

A. B., Returning Officer.
 Sworn [or affirmed] before me, at , this day
 of , 18 .

C. D.,
 Stipendiary Magistrate [or Justice of the
 Peace, as the case may be].

NOTE.—The figures in the above statement are given to illustrate
 what is wanted in the statements. No. 2 and No. 4 added, should
 amount to No. 1, and if they do not the discrepancy should be explained
 if possible, by a foot note. Nr. 2 should agree with No. 3, and No. 4
 with No. 5; if not the discrepancy should be explained. Nos. 6 and 7
 added, must coincide with 3.

K K.

RETURN AFTER A POLL IS TAKEN ON WRIT.

I hereby certify that the member [or members] elected for the
 Electoral District of , in pursuance of the Writ to me
 directed, as having received the majority of votes lawfully given, is [or
 are]— [Here insert the names, placing first the name of the candi-
 date who received the most votes, where more than one has been elected].

A. B., Returning Officer.
 Dated at , this day of , A. D. 18.

L L.

I, A. B., solemnly swear [or affirm]—

[1.] That I am the person named, or purporting to be named, by
 the name of , [and if there are more persons
 than one of the said name in the said list, inserting also his
 addition or occupation], on the list of votes for polling dis-
 trict No. , in the Electoral District of ,

- [2.] That I am a British subject by birth [or naturalization, as the case may be], and that I am of the full age of twenty-one years.
- [3.] That I have not voted before at this election, either at this or any other polling place.
- [4.] That I have not received anything, nor has anything been promised me, directly or indirectly. So help me God.

M M.

I, A. B., [candidate or agent, as the case may be], do solemnly swear that I have *bona fide* reason to believe that [*here insert the name of applicant and the particular ground of objection*] is

Electric Telegraphs (and Telephones) Protection of,

1.—Whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure, or remove any battery, machinery, wire-cable, post, or other matter or thing whatsoever, being part of, or being used or employed in or about any electric or magnetic telegraph or telephone, or in the working thereof, or shall unlawfully and maliciously prevent or obstruct in any manner whatsoever, the sending, conveyance or delivery of any communication by any such telegraph or telephone shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Supreme Court, to be imprisoned for any term not exceeding Two Years: Provided, that if it shall appear to any Justice, on the examination of any person charged with any offence against this Section, that it is not expedient to the ends of justice that the same should be prosecuted by indictment, the Justice may proceed summarily to hear and determine the same, and the offender shall, on conviction thereof, at the discretion of the Justice, either be committed to gaol for any term not exceeding Three Months, or forfeit and pay such sum of money, not exceeding Fifty Dollars, as to the Justice shall seem meet.

2.—Whosoever shall unlawfully and maliciously, by any overt act, attempt to commit any of the offences in the preceding Section of this Chapter mentioned, shall, on conviction thereof before a Justice of the Peace, at the discretion of the Justice, either be committed to gaol for a period not exceeding Three Months, or else forfeit and pay such sum of money, not exceeding Fifty Dollars, as to the Justice shall seem meet.

3.—Any person found committing any offence against the First and Second Sections of this Chapter, may be immediately apprehended without a warrant by any person, and forthwith taken before a Justice of the Peace, to be dealt with according to law.

TELEGRAPH OPERATORS, &C., TO MAKE DECLARATION,

4.—Every person who is employed in connection with any telegraph line under the control of the Government, or which, under any contract or agreement with any person or corporation, is partly under such control, as an operator, or in any other capacity in which he has opportunities of becoming acquainted with information connected with matters of state or other information, shall, subject to the provision herein contained, before entering upon the duties of such employment, take and subscribe, before a Justice of the Peace or before a person appointed by the Governor in Council to take declarations under this Act, a declaration in the following form.

5.—All declarations taken under this Act shall be forwarded to the office of the Colonial Secretary, and shall there be kept on file; and a register thereof shall be kept in the said office.

6.—Every person who has made the declaration herein-before mentioned, and who either directly or indirectly divulges to any person, except when lawfully authorized or directed so to do, any information which he acquires by virtue of his employment, is guilty of an offence against this Act, and shall, on summary conviction

before a Justice of the Peace, be liable to a penalty not exceeding one hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding six months, or to both penalty and imprisonment.

PENALTY.

7.—Every telegraph operator, or other person in the employ of a telegraph company, who divulges the contents of any telegram, except when lawfully authorized or directed so to do, is guilty of an offence against this Act, and shall, on summary conviction before a Justice of the Peace, be liable to a penalty not exceeding one hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding six months, or to both penalty and imprisonment.

DECLARATION.

I, A. B., solemnly and sincerely promise and declare that I will faithfully and honestly fulfil the duties which devolve upon me as operator, [or in other capacity, as the case may be], upon [state the line of telegraph] and that I will not, either directly or indirectly, divulge to any person, except when lawfully authorized or directed so to do, any information which I acquire by virtue of my employment as such operator, [or in other capacity, as the case may be].

[Signature],

A.B.

Declared before me, at

this

day of

18

Embezzlement.

"The distinction between embezzlement by a clerk or servant, and other kinds of theft is that in other kinds of theft the property is taken out of the possession of the owner, whereas in embezzlement by a clerk or servant the property embezzled is converted by the offender whilst it is in the offender's possession on account of his master and before that possession has been changed into a mere custody. (Stephens 252).

A most absurd distinction is made between theft and embezzlement. If A, B's servant, receives money from a customer for B and appropriates it, this is embezzlement. If A puts the money into the till and afterwards appropriates it, it is theft. Tho' there is a distinction without a difference, between larceny and embezzlement, still it exists in law. However, on a charge of embezzlement, a prisoner may now be found guilty of larceny.

Enlistment in the Service of any Foreign State. Prevention of, and Preventing the Exportation of Arms and Munitions of War.

1.—The Governor in Council may, by Proclamation in the *Royal Gazette*, prohibit any person in this Colony from enlisting or engaging in the Naval or Military Service of any Foreign State, and also from recruiting, hiring, or engaging, or procuring or attempting to recruit, hire or engage, or procuring, soliciting or persuading any person to enlist or engage in such service.

2.—The Governor in Council may, by Proclamation in the *Royal Gazette*, prohibit the exportation of Arms, Gunpowder, Military Stores, and Munitions of War, from this Colony, and also prohibit the importation of the same, if

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imported for the purpose of exportation, or may make rules and regulations with regard to such exportations or importation for the purposes of exportation, which rules and regulations shall be published in the *Royal Gazette*.

2.—The Governor in Council may, by Proclamation, as aforesaid, rescind, alter, vary, amend or renew such Proclamation, rules and regulations, from time to time.

Penalty for violation of these provisions, fine not exceeding \$400. Imprisonment not exceeding 2 yrs. Triable before the Supreme Court.

Foreign State, including all *de facto* Governments and all persons assuming to exercise the powers of Government, limit of time for prosecution, one year.

All offences shall be held to be committed in the place where tried.

**Encroachment and Obstruction of Public Beaches,
Landing Places, Breakwaters, &c.**

1.—Any person who having been duly notified by the Surveyor General of his encroachment and obstruction, and having been required to remove the same, shall wilfully continue to encroach upon or obstruct any of the public beaches, landing places, or breakwaters, in this Colony or the way thereto, may be summoned before any Stipendiary Magistrate or two or more Justices of the Peace, who shall decide in a summary way a complaint in the name of the Surveyor General concerning such encroachment, or obstruction, and on being satisfied by the proof thereof, such Magistrate or Justice of the Peace may adjudge the offender to pay a penalty not exceeding twenty dollars, together with the costs and expenses of removal of any such en-

encroachments or obstructions, which said penalty and costs may be levied by distress and sale of the offender's goods and chattels.

2.—Such encroachments or obstructions, as aforesaid, may be removed by the order of such Stipendiary Magistrate or Justice, or the Surveyor General may cause the same to be removed: provided that this section and the section next preceding shall not apply to cases of disputed right of way over private property.

Enquiries Concerning Public Matters.

1.—Whenever the Governor in Council deems it expedient to cause enquiry to be made into, and concerning any matter connected with the good government of this Colony, or the conduct of any part of the public business thereof, or the administration of justice therein, and such enquiry is not regulated by any special law, the Governor may, by the commission in the case, confer upon the commissioners or persons by whom such inquiry is to be conducted the power of summoning before them any party or witness, and of requiring them to give evidence on oath orally or in writing, (or on solemn affirmation), and to produce such documents and things as such commissioners deem requisite to the full investigation of the matters into which they are appointed to examine.

2.—The Commissioner or Commissioners shall then have the same power to enforce the attendance of such witnesses and to compel them to give evidence as is vested in any court of law in civil cases; and any wilfully false

statement, made by any such witness on oath or solemn affirmation, shall be a misdemeanor punishable in the same manner as wilful and corrupt perjury; but no such party or witness shall be compelled to answer any question, by his answer to which he might render himself liable to a criminal prosecution.

Evidence.

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| 1.—General observations. | 14.—Punishment for false affirmation. |
| 2.—Objection to credibility, not competency of witness; exceptions. | 15.—Party objecting to be sworn, may make declaration. |
| 3.—Husband or wife of informer. | 16.—Examination and cross-examination. |
| 4.—Defendant not competent or compellable in indictable offences. | 17.—How far a party may discredit his own witness. |
| 5.—Summary proceedings; defendant competent but not compellable. | 18.—Proof of contradictory statements of adverse witness. |
| 6.—Husband or wife not compelled to disclose communications between them. | 19.—Cross examination on previous statements. |
| 7.—Privilege of clergymen. | 20.—Previous conviction—how proved. |
| 8.—Exceptions—idiots, lunatics, children, persons under sentence of death. | 21.—Re-examination. |
| 9.—Want of religious belief. | 22.—Judicial notice of facts. |
| 10.—Authority to administer oath. | 23.—General rules of evidence. |
| 11.—Form of oath. | 24.—Public documents. |
| 12.—Distinction between form and substance of oath. | 25.—Evidence obtained by promise or threat. |
| 13.—Affirmation instead of oath, in certain cases. | 26.—Evidence of handwriting. |
| | 27.—Police as witnesses. |
| | 28.—The presumption of innocence. |

1.—There is no difference as to the rules of evidence between civil and criminal cases; the evidence that may be received in one case may be received in the other, and the evidence that is rejected in a civil case ought to be rejected in a criminal case. The amount of proof, however, required, varies with the different proceedings before Justices; for instance, in a preliminary enquiry for an indictable offence, the evidence must raise a strong or probable presumption of the guilt of the party charged, to justify

the Justice in sending him for trial. [See note, page 83.] In summary penal proceedings the proof of guilt must be full and convincing, whilst in matters of civil jurisdiction a mere *preponderance* of proof will suffice to establish the case. The presumption of innocence, that is, that all accused persons are innocent until proved guilty, thus throwing the whole burthen of proof of guilt on the prosecutor, also marks one of the great distinctions between the evidence required in civil and criminal business.

2.—At the present day it may be laid down as a general rule that objections can only be taken to the *credibility*, not to the competency, of witnesses. There are, however, some exceptions which are thus summarized;—the informer or prosecutor or complainant is competent and compellable to give evidence for himself or defendant, in all criminal proceedings, indictable and summary.

3.—The husband or wife of the informer or prosecutor or complainant is likewise competent and compellable to give evidence for the Crown, as well as for the defendant, and also *against* each other, in cases of personal injuries committed on one another.

4.—The defendant (*the party charged*) is not competent or compellable to give evidence for or against himself or herself in indictable offences, nor is his wife, except in case of personal injury committed by one on the other, where the evidence of the injured party is admissible *against* the other.

5.—In summary proceedings the defendant or his wife is a competent witness, but is not *compellable*, the

words of the proviso in sec. 8, cap. 23, Consolidated Statutes, being,—

“ Provided that nothing herein contained shall preclude a defendant or the husband or wife of a defendant from becoming a witness, *should he or she think fit*, in any summary proceedings of a criminal or other nature.”

6.—Section 9 of the same chapter provides that,—

“ No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.”

7.—Sec. 11 of the same chapter provides that,—

“ A clergyman or priest shall not be compellable to give evidence as to any confession made to him in his professional character.”

8.—On the above statutory exceptions to the principle of universal competency, certain common law exceptions must be grafted; for instance, persons who have not the use of reason are from their infirmity utterly incapable of giving evidence, and are therefore excluded as incompetent witnesses, as idiots, lunatics, children. [Powell, 18.]

The evidence of children at any age is admissible, if it appear that they have sufficient discretion and understand the moral obligation of an oath, and under the criminal law Amendment Act, 1885, the unsworn evidence of a child of tender age is receivable.

Deaf and dumb persons, if they have sufficient understanding, may give evidence, either by signs or through an interpreter or in writing. [Powell, 17 & 18.]

9.—No person is a competent witness, unless he believes in a Supreme Being, who will furnish him either in the present or in the future life for perjury. [Powell, 19, 21.]

10.—It may be laid down as a general rule that whenever Justices are authorized by law to hear and determine or examine witnesses, they have incidentally the power to examine on oath. [2 *Phil. Ev.*, 795.] In summary proceedings.

“Every witness to be examined upon oath or affirmation, and the Justice shall have full power and authority to administer to every such witness the usual oath or affirmation.” In indictable offences, “Such Justice shall, before any witness is examined, administer to such witness the usual oath or affirmation, which such Justice shall have full power and authority to do;” [11 & 12 Vic., c. 42, s. 17], and by sec. 17, cap. 23, Consol. Stat.: “Every Court, Judge, Justice, Officer, Commissioner, Arbitrator, or other person, now or hereafter having by law or by consent of parties, authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them, respectively.”

11.—The oath is generally in the following form: (a)

“The evidence which you shall give on the present enquiry [or touching this application or complaint, as the case may be] shall be the truth, the whole truth, and nothing but the truth. So help you God.”

12.—The particular form or ceremony of administering an oath is quite distinct from the substance of the oath itself. [1 *Phil.* 8, 9th ed.] The form of oath under which God is invoked as a witness or an avenger of perjury, is to be accommodated to the religious persuasion which the swearer entertains of God, and to be administered in such form as to be binding on his conscience. Within the limits of this little work, the various forms of oaths taken by the

(a) *Form of Interpreter's Oath.*—You shall truly and faithfully interpret the evidence about to be given and all other matters and things touching the present charge, and the [*French. as the case may be,*] language into the English language, and the English language into the [*French, &c.,*] language according to the best of your skill and ability. So help your God.

different religious persuasions, cannot be given. The swearing upon the Holy Evangelists is binding both on Roman Catholics and Protestants.

13.—Section 27 of the 23rd chapter of the Consolidated Statutes contains the following provision :

" If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, the Court or Judge, or other presiding officer, or person qualified to take affidavits or depositions, may, upon being satisfied of the sincerity of such objection, permit such person, instead of being sworn, to make his or her solemn affirmation or declaration, in the words following—*videlicet* :

" I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful ; and I do also solemnly, sincerely, and truly affirm and declare, &c." Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form. [Sec. 27.]

14.—If any person making such solemn affirmation or declaration shall wilfully, falsely, and maliciously affirm or declare any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the laws and statutes of this Colony are or may be enacted or provided against persons convicted of wilful and corrupt perjury. [Sec. 28.]

15.—If any person called to give evidence in any Court of Justice, whether in a civil or criminal proceeding, shall object to take an oath or shall be objected to as incompetent to take an oath, such person shall, if the presiding Judge is satisfied that the taking of an oath would have no binding effect upon his conscience, make the following promise and declaration :

" I solemnly promise and declare that the evidence given by me to

the Court shall be the truth, the whole truth, and nothing but the truth."

And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried and convicted for perjury, as if he had taken an oath. [Sec. 29.]

16.—AS TO THE MODE OF EXAMINATION.—On an examination in chief, (*that is, where the party puts questions to his own witness*) a witness must not be asked *leading questions* (*leading questions are questions put in such a form as to suggest the desired answers.*) There are, however, some exceptions to this rule; (1), where the witness proves adverse to the examining party, leading questions may be asked by permission of the Court; (2), where a witness has apparently forgotten a circumstance, and by inspecting a memorandum to refresh his memory, [*Powell*, 376, 379]; (3), where the object is to contradict another witness as to a certain fact; (4), where the object is to identify persons; (5), where the question is merely introductory to another. On cross-examination, an adverse witness may be asked leading questions. A witness must only be asked questions of facts which are relevant and pertinent to the issue, he cannot be asked irrelevant questions or questions as to his own inferences from a personal opinion of facts.

17.—A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the Judge prove adverse, contradict him by other evidence, or leave of the Judge prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given, the cir-

circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement. [Consol. Stat., c. 23 s. 30.]

18.—If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the cause and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement. [*Idem*, sec. 31.]

19.—A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the cause, without such writing being shown to him; but if it be intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided that it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit. [*Idem*, sec. 32.]

20.—A witness in any cause may be questioned as to whether he has been convicted of any felony or misde-

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meanour; and upon being so questioned, if he either deny the fact or refuse to answer, the opposite party may prove such conviction; and a certificate, containing the substance and effect only (omitting the formal part) of the indictment and conviction of such offence, purporting to be signed by the Clerk of the Court where the offender was convicted, or by the Deputy of such Clerk or Officer, (for which certificate a fee of one dollar, and no more, shall be demanded or taken) shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have made the same. [*Idem*, sec. 35.]

21.—RE-EXAMINATION.—(After, say the defendant's cross-examination, the plaintiff again asks his witness questions, this is known as *re-examination*.) The office of re-examination is to be confined to shewing the true color and bearing of the matter elicited by cross-examination, and new facts or new statements, not tending to explain the witness's previous answers, are not to be admitted. [*Taylor on Ed.*, 627.] The Court has always a discretionary power of recalling witnesses at any stage of the proceeding and putting such legal questions to them as the exigencies of justice require. If a question has been omitted in the examination in chief and cannot in strictness be asked on re-examination, it is usual to request the Magistrate to make the enquiry and such a request is generally granted. (*Taylor on evidence*.)

22.—As a general rule, everything has to be proved in a Court of Justice, but there are certain facts of which

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all Courts in this Colony are bound to take judicial notice, without proof, viz.: the Acts of the Legislature, when purporting to be printed by the Queen's Printer for the Island, [Consol. Stat. p. 2,] the Imperial Statutes, Royal Proclamations, the Almanac, the divisions of the year; also the *Royal Gazette* of this Colony, and all Proclamations and Notices therein.

23.—GENERAL RULES.—The following are some of the general rules established by the decisions and practice of the Superior Courts, and to which the proceedings before Justices should conform: That a person is presumed to be innocent until the contrary be proved; that a party shall not be allowed to put leading questions, that is, questions in such a form as to suggest the answer desired, to his own witness; that hearsay evidence is inadmissible, that the statement of one prisoner is not evidence either for or against another prisoner; that conversations which have taken place out of the hearing of the party to be affected cannot be given in evidence; that the evidence of an accomplice (a) is admissible, but ought not to be fully relied upon, unless it be corroborated by some collateral proof; that no person is bound to answer a question which may tend (b) to criminate himself, that if a witness choose to answer such question, his answer is conclusive; that, in general,

(a) This is not a rule of law, but of practice, and as such approved of by the superior courts. [*R. v. Stubbs*, 25 *L.J.* 16.]

(b) The privilege of refusing to answer such a question is that of the witness only. [*R. v. Kinglake* 22, *L. T. (N.)* 335.] The Judge has to decide whether there is reasonable ground to apprehend danger to the witness. A Police officer is not bound to state the name of his informant.

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the opinion of a witness as to any fact in issue is inadmissible, unless upon questions of skill and judgment; that the *onus probandi* lies upon the party asserting the affirmative; that the best evidence should be given of which the nature of the case is capable; that secondary evidence is therefore inadmissible, unless some ground be previously laid for its introduction, by showing the impossibility of procuring better evidence; that parol testimony is not receivable to vary or contradict the terms of a written instrument; that a person shall not be allowed to speak to the contents of a written instrument, unless it be first proved that such document is lost or destroyed, or, if in the possession of the adverse party, that notice has been given for its production; that a witness may be allowed to refresh his memory by reference to an entry or memorandum made by himself shortly after the occurrence of which he is speaking, although the entry or memorandum could not itself be received in evidence; that when positive evidence of the facts cannot be supplied, circumstantial evidence is admissible; and that circumstantial evidence should be such as to produce nearly the same degree of certainty as that which arises from direct testimony, and to exclude a rational probability of innocence. (c)

[c] *Circumstantial Evidence.*—The description of evidence called circumstantial consists of proving, not the facts sought, but a fact or facts from which it may be deduced in the way of presumption or inference. Upon this point it is said [1 *East. P. C.*, c. 5, s. 9, p. 223.] “Perhaps strong circumstantial evidence, in cases of crimes committed for the most part in secret, is the most satisfactory of any from whence to draw the conclusion of guilt; for men may be seduced to perjury by many base motives, to which the secret nature of the offence may sometimes afford a temptation; but it can scarcely happen that many circumstances, especially if they be such over which the accuser could have no

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24.—As respects the proof of public documents, the Consolidated Statutes, sec. 13, cap. 23, provides,—

“Every document, which by any law now in force or hereafter to be in force, is or shall be admissible in evidence of any particular in any British Court of Justice, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence, to the same extent and for the same purposes, in any Court of Justice in this Colony, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same.”

And section 15 provides that,—

“Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents proveable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice, or before any person now or hereafter having, by law or consent of parties, authority to hear, receive, and examine evidence: Provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified, as a true copy or extract, by the officer to whose custody the original is entrusted; and

control, forming altogether the links of a transaction, should all unfortunately concur to fix the presumption of guilt on an individual, and yet such a conclusion be erroneous.” The following rules are given in *Starkie on evidence*, 3rd Ed., p. 571 to 575:—

1.—The circumstances from which the conclusion is drawn should be fully established.

2.—All the facts should be consistent with the hypothesis [*i.e.*, supposition], that a crime was committed and that the accused was the party who committed the crime.

3.—The circumstances should be of a conclusive nature and tendency.

4.—The circumstances should to a moral certainty actually exclude every hypothesis, but the one proposed to be proved. [*Oke*, p. 86.]

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which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding ten cents for every folio of ninety words."

And under Imperial Acts the mode of proving public non-judicial documents is prescribed by 8 & 9 Vic., c. 113, s. 1, and 14 & 15 Vic., c. 99, s. 14, and under "The Documentary Evidence Act, 1868," (31 and 32 Vic., c. 37), various documents, such as proclamations, orders, or regulations of the Queen or Privy Council, or by authority of the Treasury, &c., may be proved by a copy of the *Gazette*, or a copy by the government printer, or in certain cases by an extract or copy, certified by the proper officer of the department.

25.—EVIDENCE OBTAINED BY PROMISE OR THREAT.—Any evidence which has been obtained from a prisoner in consequence of any threat, promise, or inducement [*R. v. Garner*, 18 L. J. 1] as, "You had better speak the truth;" "You had better speak; it is of no use denying it, as A. B. swears he saw you do it;" or the like, and made to the prisoner by any person concerned in the apprehension, examination, or prosecution of the prisoner, will render such evidence inadmissible; but any facts discovered in consequence of information so obtained may be given in evidence. But the words "You need not say anything to criminate yourself; what you do say will be taken down and used as evidence against you," used by a policeman, do not render the confession inadmissible [*R. v. Baldry*, 21 L. J. 130; see also *R. v. Luckhurst*, and *R. v. Sleeman*, 23 L. J. 18 and 19]; nor an inducement held out or advice given by a fellow prisoner [*R. v. Parker*, 25 J. P. 374];

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nor the prosecutor (the master) advising his servant (the prisoner) to answer any questions truthfully, &c. [*R. v. Jarvis*, 1 L. R. (C. C.) 96]; nor the mistress of the prisoner in the presence of a police officer, saying, "You may as well tell the truth; it is sure to be found out." [*R. v. Edwards*, 33 J. P. 119, 145]; nor a mother saying to her son, "You had better, as a good boy, tell the truth [*R. v. Reeve*, 26 L. T. (N.) 403.]

26.—**HANDWRITING, EVIDENCE OF.**—The handwriting of a person should always, if possible, be proved by the writer himself, but in his absence it may be proved by a witness who saw the party write the paper in question or sign it. By a witness who has knowledge of the person writing by having seen him write; also, by comparison by persons acquainted with the writing, or by experts (skilled witnesses) by comparison of the disputed writing with any writing proved to the satisfaction of the Court to be genuine.

27.—**POLICE AS WITNESSES.**—Police should answer all questions in a distinct tone of voice and only depose to facts of which they have actual personal knowledge. They may refresh their memory by reference to their note book. They should always make a memorandum of the facts at the time. In giving evidence of confession or statements of the prisoner they should be careful to give the exact words, disgusting or filthy language should not be repeated unless the witness is specially called upon to state the exact words made use of.

28.—**PRESUMPTION OF INNOCENCE.**—If the commission of a crime is directly in issue in any proceeding, civil or

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criminal, it must be proved beyond all reasonable doubt. The burthen of proving that any person has been guilty of a crime, or wrongful act is, on the person who asserts it, whether the commission of such act is, or is not directly in issue in the action. This is otherwise stated by saying that the prisoner is entitled to the benefit of every reasonable doubt. (Stephen 183, General View Crim. Law). The gist of all this is that Magistrates must not hastily jump to a conclusion about the guilt of the accused. Every fair play must be given to the prisoner, and this principle of the presumption of innocence must be carefully borne in mind.

EXAMINATION.—See Indictable Offences.

EXECUTION.—See Civil Jurisdiction of Magistrates, p. 21, and District Court, p. 1.

EXPENSES.—See Fees and Costs.

EXHIBITION, INDECENT.—See Indecent Exposure of person.

EXPLOSIVES.—See under the head Dynamite, Storing of, p. 179.

EXPOSURE, INDECENT.—Exposure of person. Any one indecently exposing their person in any street, road, public place or highway, or exhibiting in any street, &c, any indecent exhibition; penalty not exceeding \$20, imprisonment not exceeding three months. (See, however, limits of penalties under summary jurisdiction, Act 1879.

EXPORTATION OF ARMS.—See Enlistment and Exportation of Arms,

False Pretences.

FALSE PRETENCES.—Whosoever shall, by any false pretence, obtain from any person any chattel, money or valuable security with intent to defraud. Indictable misdemeanor. Punishment, not exceeding 2 years imprisonment. Bail discretionary. Attempting to obtain money by false pretences also (Indict. Mis.)

False pretences is a very large subject, and opens up some very nice distinctions. Mere puffing of goods, or general trade lying is not held to be false pretences. "There must be an intentional and specific false representation made either by words, writing or conduct, that some fact exists or existed, and such representation may amount to a false pretence, though a person of common prudence might easily have detected its falsehood, and the existence of the alleged fact was impossible"—Stephens. The distinction between larceny and false pretences has been thus defined. "If I fraudulently induce a man to *lend* me his property and then make off with it, it is larceny. If I fraudulently induce him to part with the ownership of the property which he thereupon assents to my carrying off and dealing with as my own, this is obtaining money by false pretences"—Ingram. Upon the trial of a person indicted for false pretences, he is not entitled to be acquitted merely because the Court may be of opinion that he ought properly to have been charged with *larceny*. In cases of doubt a prisoner should be charged with false pretences. He may on this charge be convicted of larceny.

FEES AND COSTS IN CIVIL CASES.—See District Court and page 22 and 23 for fees and costs in civil cases before Magistrates.

Fees.

Fees in summary criminal cases before Magistrates payable to the Clerk of the Peace for every—

Summons.....	\$0 25
Recognizance.....	25
Every Oath.....	25

WITNESSES FEES.

Each day's attendance as a witness.....	75
All travelling to be computed from the residence of the witness to the place of trial and back again per mile.....	10

FEES PAYABLE TO CLERKS OF THE PEACE IN CASES OF
FELONY OR MISDEMEANOUR BEFORE A JUSTICE
OF THE PEACE.

Deposition or Examination.....	50
Summons.....	25
Subpœna.....	25
Warrant.....	30
Commitment.....	30
Recognizance of prosecuting witness or other person....	30

No. 3.

FEES PAYABLE TO CONSTABLE OR BAILIFF.

For service summons or subpœna.....	25
Executing by warrant to arrest the person.....	50
If the service or execution of the process or writ shall require the officer to travel beyond the distance of two miles, he shall be allowed for every mile	

Crimes.

travelled by him for such purpose beyond that distance, the sum of.....\$0 10

For execution of any warrant, order, or final process, of or from a Justice..... 20

When the levy under warrant, order or final process, shall exceed five dollars, then there shall be allowed to such officers on such levy, in addition to the above fee of twenty-five cents, five per cent. on the amount realized.

FEES TO GAOLER OR KEEPER OF LOCK-UP.

For every person committed to gaol..... 50

For every person discharged therefrom except Insolvents 50

Printed tables of the foregoing fees to be posted up in every Police Office and Court of Sessions for public inspection, any one taking greater fees to forfeit \$50.

FELONY.—Crimes are divided into Treasons, Felonies, and Misdemeanours.—Every person convicted of Treason or Felony may be condemned to the payment of the whole or any part of the costs and expenses incurred in and about his prosecution and conviction. One hundred pounds stg., may be awarded for loss sustained through the means of the Felony. Persons sentenced to death or any term of imprisonment over 12 months cannot hold office under the Crown or sit in Parliament. Such incapacity continues until such person has suffered punishment. The distinction between Felonies and Misdemeanours are purely arbitrary. The following are the chief Felonies: Inciting to mutiny, felonious riots, unlawful oaths. Unnatural

Female Passengers.

crimes—Felonious escapes, murder, manslaughter, attempts to murder, inflicting greater bodily injury, rape, connection with children under 13, bigamy, larcenies of all kinds and receiving stolen goods, forgery, arson, &c., &c.

FEMALES.—Assaults on, see p. 65. On indictment indecent assaults, both on males and females, are punishable with imprisonment not exceeding 2 years.

FEMALE PASSENGERS TO LABRADOR.—Females engaged as servants in the fishery or as Passengers between Newfoundland and Labrador must have separate cabin accommodation 50 cubic feet for each female and sufficient sanitary accommodation. Penalty not exceeding \$100.

FENCES.—In any action, complaint, prosecution or other proceedings instituted for any injury or damage caused by cattle breaking into or trespassing on land, or destroying or damaging crops or products thereof. . . . Tenant or owner not entitled to recover, nor shall owner or party in possession of such cattle be liable to fine or damages or any other punishment unless it be proved at the trial that the land trespassed on or broken into was enclosed by a good and substantial fence, and that such cattle effected an entry upon such land by breaking down, removing, or leaping over such fence

Cattle shall be construed to mean, cows, bullocks, horses and sheep.

This clause shall not be construed to affect any existing agreements or covenants relating to boundary fences (39 Victoria, Cap. 10, 1876).

*Ferries.***Ferries.**

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| 1—Governor may establish ferries.
2—Courts of Sessions may make rules for ferries, &c. | 3—Justices may suspend ferry-men in certain cases.
4—Provision in case of ferry boat being taken away or injured.
5—Penalties, how recovered. |
|---|---|

1—The Governor in Council may establish such ferries over straits, rivers, bays, harbors and creeks within the Colony as may be provided by the Legislature, and appoint persons to serve as ferrymen under such rules and for such fees, to be paid by the parties using such ferries, as may be prescribed and settled in the manner hereinafter provided; and any person who shall accept the place and duty of ferryman, and shall refuse or neglect to comply with and observe the several articles, rules and clauses contained in the rules and regulations prescribed for his guidance in that behalf, shall forfeit a sum not exceeding eight dollars.

2—The Court of Sessions nearest to the place where any ferry shall be established may frame rules for the management thereof, and fix a rate of fees to be paid for the transit of passengers, animals, vehicles and articles of any description thereat: Provided that such rules and rates respectively shall be subject to the approval of the Governor in Council before the same shall be put into operation.

3—On complaint being made to the Justices in session of any improper conduct or neglect of duty on the part of any ferryman over whom they shall have jurisdiction, such

Fires.

as in the opinion of the Justices to require the suspension and dismissal of such ferryman, the Justices shall take the deposition of the party complaining, or of any other person, with respect to the subject matter of such complaint, and transmit the same to the Colonial Secretary with their report thereon, and may in the meantime suspend such ferryman and appoint some other person to perform his duties until the decision of the Governor in Council upon the matters aforesaid shall have been received.

4—On complaint on oath being made to any Justice near where any ferry shall have been established, of any person having wilfully and maliciously taken away, damaged or destroyed the boat of the ferryman at such place, such Justice shall issue his warrant for the apprehension of the offender, and upon hearing the parties, make such order for the restoration of such boat, and for the reparation of any damage done to the same, as in that behalf may be just; and in the event of a refusal to comply with such order, shall imprison the party refusing obedience thereto for any time not exceeding thirty days.

5—All penalties imposed by this Chapter may be sued for and recovered in a summary manner before any one of her Majesty's Justices, and shall be levied, together with costs, by warrant of distress on the goods and chattels of the party convicted.

Fires—Enquiries Respecting the Origin of Fires.

For the prevention of arson it was deemed advisable to give Magistrates the power to hold an investigation

Fires.

into the cause or origin of all fires without any specific charge being made against any one.

The necessity for this statutable power to make enquiries arises from the fact that arson is essentially a secret crime always most difficult to detect, and specially difficult to prove.

On the grounds of public safety this extra power has been conferred on Stipendiary Magistrates.

"Whenever any building or property shall be injured or destroyed by fire. The Stipendiary Magistrate or Justice for the District in which such fire shall occur, or such Justice as the Governor-in-Council may appoint therefor, shall make such investigation to ascertain the origin or cause of the fire; and such Magistrate or Justice may enforce the attendance of such persons to give evidence before him as he may require by summons or warrant and examine them under oath, and the proceedings and all depositions connected therewith shall be returned to the Attorney General for such further proceedings as may be prescribed by law."

Should the investigation shew a *prima facie* case against any person for arson, the investigating Magistrate should make a charge and proceed as for an indictable offence. Taking care always to acquaint the Attorney General promptly with the facts of the case.

Fires in the Woods, &c.

1.—It shall not be lawful for any person to set out, light or start, or cause to be set out, lighted or started, any fire in or near any woods in this Colony, except for the

Fires.

purposes of clearing land, cooking, obtaining warmth, or for some industrial purpose; and, in case of lighting or starting fires for any such purposes, the obligations and precautions imposed by the two following Sections shall be observed.

2—Every person who shall make or start, or cause to be made or started, a fire for the purpose of clearing land, shall exercise and observe every reasonable care and precaution in the making and starting of such fire, and in the managing of, caring for and controlling the said fire after it has been made and started, in order to prevent the same from spreading and burning up the trees, shrubs or plants surrounding, adjoining, or in the neighborhood of the place where it has been so made or started.

3—Every person who shall, between the First day of May and the Thirtieth day of November, make or start, or cause to be made or started, a fire in or near the woods for cooking, for obtaining warmth, or for any industrial purpose, shall—

1. Select a locality in the neighborhood in which there is the smallest quantity of dead wood, branches, brushwood, dry leaves, resinous trees, heath, peat, turf, dry moss, or vegetable matter of any kind.
2. Clear the place in which he is about to light the fire by removing all dead wood, branches, brushwood, dry leaves, resinous trees, heath, peat, turf, dry moss and other vegetable matter from the

Fires.

soil, within a distance of not less than five feet in every direction from any part of the fire.

3. Exercise and observe every reasonable care and precaution to prevent such fire from spreading, and carefully extinguish and see that the same is extinguished before quitting the place.

4—The owner or occupant of the land upon which any fire mentioned in the foregoing Section shall be made or originate, shall be deemed and taken to be the party offending, and shall be liable to the several penalties provided by this Act, unless such owner or occupant shall, when called upon so to do, declare upon oath before a Stipendiary Magistrate that such fire was not made, started or lighted by him, or by any person by his direction.

5—Whenever a fire originates on Crown lands, and in the neighborhood of any place where it has been ascertained that a person or a number of persons were a short time previously to the happening of such fire, camping, cooking, fishing, or engaged in some industrial occupation, he or they shall be taken to be the party or parties offending, and shall be liable to the several penalties provided by this Act, unless he or they shall, when called upon to do so, declare upon oath before a Stipendiary Magistrate, that such fire was not made, started or lighted by him or them, nor by anyone in his or their company or service, by his or their direction.

6—Every person in charge of any party of men engaging in lumbering, railroad building, surveying or explor-

Fires.

ing, shall provide himself with a copy of this Act, and shall take steps to make the men employed by or under him acquainted with its provisions.

7--All locomotive engines shall, by the person, company, (or manager thereof), using the same, be provided with and have in use all the most improved and efficient means to prevent the escape of fire from the furnace or ash-pan of such engines, and the smoke-stack or the boiler extension of each wood-burning locomotive so used, shall be provided with a bonnet, screen or spark-arrester of iron or steel-wire netting, the size of the wire used in making the netting to be not less than No. 19 of the Birmingham wire gauge, or three sixty-fourths part of an inch in diameter, and shall contain in each square inch at least eleven wires each way at right angles to each other, that is, in all twenty-two wires to the square inch; or, in the case of coal-burning locomotives, the smoke-stack, furnace and ash-pan shall be constructed of the newest and most improved pattern, the standard to be that, at the passing of this Act, used by the Placentia Railway.

8--It shall be the duty of every engine driver in charge of a locomotive, to see that all such appliances as are above mentioned are properly used, and so as to prevent the unnecessary escape of fire from any such engine, so far as it is reasonably possible to do so.

9--Any person violating the First, Second or Third Sections of this Act, shall be liable to a penalty of not less than Twenty-five Dollars, nor more than One Hundred Dollars, for each offence.

Fires.

10—Any person violating the Sixth or Eighth Sections of this Act, shall be subject to a penalty of not less than Twenty-five Dollars, nor more than One Hundred Dollars, for each offence.

11—Any person, railway company, or the manager thereof, permitting any locomotive engine to be used in violation of the Seventh Section of this Act, shall be liable to a penalty of One Hundred Dollars for each offence.

12.—In any prosecution under this Act for a breach of the Seventh Section, or for damages in a civil action, resulting from fires set by locomotive engines, it shall not be necessary to prove the name or number of the engine, nor the name of the engineer or fireman in charge of such locomotive when the fire was started.

13—Whenever railways pass through the woods, the railway company shall clean from off the sides of the railway to a reasonable distance therefrom, all combustible material by safe burning or otherwise.

14—Any railway company violating the Thirteenth Section of this Act, shall be subject to a penalty of One Hundred Dollars for each offence.

15—It shall be the duty of the Government Engineer to inspect and examine, or cause to be inspected or examined, from time to time, all locomotive engines used in the Colony, with a view of ascertaining whether the pro-

visions of this Act are complied with, and for the purpose of enforcing the said provisions.

16—The Government Engineer, or other person authorized by him in writing, shall have power to enter into any shed or shop or upon any premises where locomotive engines are kept, for the purpose of inspecting and examining such locomotive engines.

17—Any person or persons obstructing or interfering with such engineer or other person authorized by him in the discharge of his duty, shall be subject to a penalty not exceeding one hundred dollars for each offence.

18—All offenders against the provisions of this Act may be prosecuted and convicted, and all fines, penalties and punishments imposed, recovered and made in a summary manner before a Stipendiary Magistrate by any person who shall make complaint and prosecute the offender to conviction.

19—Whenever any fine or penalty imposed under the provisions of this Act is recovered, one moiety thereof shall be awarded to the person prosecuting the offender to conviction, and the other moiety shall be paid to the Receiver General for the use of the Colony.

20—In case the amount of any penalty recovered under the provisions of this Act and costs be not paid forthwith, the offender shall be subject to a term of imprisonment of one day for each dollar of such penalty and costs.

Fires.

21---Whenever any fire is caused or originated by any locomotive engine under the control or in the service of the Government of this Colony, and loss by such fire is occasioned to the owner or lessee of any property through those in charge of any such locomotive engine not adopting the precautions contained in the provisions of this Act, for the purpose of ascertaining the damage that has been occasioned the owner or lessee by such fire, the Governor may appoint one person, and the party so affected another person, which two persons shall determine, by arbitration, the amount of compensation to be paid such party according to his interest therein; and in case such two parties should not agree in their award, then they shall name a third arbitrator, and in case they should not agree over the nomination of such third arbitrator, either party may apply to the Supreme Court or a Judge thereof, and upon hearing such application the said Court or a Judge thereof shall appoint such third arbitrator, and the award of any two of them shall be final and binding, and the said arbitrators shall be sworn before a Magistrate to do justice between the parties, and may summon and require the attendance before them of all parties interested in the property, their agents and all necessary witnesses, and require before them the production of all deeds and papers requisite to establish the title or interest of any party claiming compensation as aforesaid, and may examine upon oath (to be administered by any one of such arbitrators) all such parties, agents, or witnesses touching the matters to be enquired into by such arbitrators, and the awards and decisions of such arbitrators shall in all cases be final and binding on all parties.

Fires.

22—All proceedings for offences against the provisions of this Act shall be commenced within six calendar months following the day of the commission of such offence, and all claims against the Government for damages occasioned by any locomotive engine under the control or in the service of the Government, shall be furnished at the office of the Government Engineer within six months from the happening of such casualty by fire.

23—It shall be the duty of all officers of the Crown lands and all constables to enforce the provisions and requirements of this Act, and in all cases coming within their knowledge to prosecute every person who may be guilty of a breach of the provisions and requirements of the same, under a penalty of not less than Twenty-five nor more than One Hundred Dollars for each omission of duty.

24—In this Act the word "woods" shall include forest, wood, track covered by underwood, barren, dry marsh or bog.

25—Nothing in this Act contained shall be held to limit or interfere with the right of any party to bring and maintain a civil action for damages occasioned by fire, and such right shall remain and exist as though this Act had not been passed, except such right shall not extend to cases provided for under Section Twenty-one of this Act.

Note.—The old Act contained the words, "If any one shall willfully or *carelessly* set on fire or cause to be set on

Fisheries.

fire any of the woods, &c." The omission of the word carelessly in the present Act is a serious defect. The country has suffered so much injury from forest fires that the most stringent laws should be passed to prevent this terrible scourge. Even an accidental setting fire to the woods should be severely punished.

Fisheries.

The enactments on this subject are very contradictory and confused. Under the head of Inland Fisheries I have endeavoured to state the law concisely and clearly, as I believe it should be read.

The larger subject of Coast Fisheries is still in a state of confusion, the present state of the law on this most vital question will be found under the head of Trade and Fisheries.

FISHERIES—MANUFACTURE OF FISH INTO MANURE.

It shall not be lawful to manufacture into manure or into any article to be used as manure, either by machinery or by artificial chemical process, or by the use of both, any capelin, herring, squid or other fish used as bait in the prosecution of the fisheries. Penalty, \$500.

This absurd law which prevents the manufacture of fish guano, so largely utilized in Norway and other great fish countries, does not prevent the manufacture of fish offal into manure, only bait fishes,

Fisheries.

FISH OFFAL—Throwing fish offal on fishing grounds. Any one who shall throw overboard or deposit upon any fishing ground or ledges in or near the coasts of Newfoundland or Labrador, any heads, entrails, bones or offal of cod-fish. Penalty, not exceeding \$200, or in default of payment, imprisonment not exceeding 60 days.

FISHERIES (INLAND.)

1---No person shall at any time catch, kill or take any kind of non-migratory fresh water fish in any inland lake, river, or stream in the Colony by the use of any net, bul-tow, weir, otter, line or other deleterious compound. Penalty, not exceeding \$10 or imprisonment not exceeding 10 days.

2---No person shall catch, kill, or take any kind of trout, char, white fish, land-locked salmon or any fresh water or migratory fish in any lake, river, or stream of this Colony, between the 15th September and 1st February in any year. Penalty, not exceeding \$10. Imprisonment, not exceeding 10 days.

3---No person shall by spearing or sweeping with nets or seines, take or attempt to take, salmon, grilse, par or trout in any bay, river, stream, cove, pond, or lake, above where the tide usually rises and falls.

4---No saw dust or mill rubbish shall be cast into any river, stream, lake or water course.

5---No mill, dam, rack, frame, traingate or other erection or barrier shall be erected in or across any river;

Fisheries.

stream, lake or watercourse to a greater distance than one-third of the width of the water, so as to leave the middle third part of the water free for the passage of salmon.

6—No nets or other contrivance to be set or remain in the water in any stream, lake, or watercourse for the capture of fish nor shall any one capture fish in any such water by means of nets, seines or other contrivances. No net or seine or other contrivance to be moored within 200 yards of the mouth of any stream or watercourse, and where nets may be set in an estuary, an open passage of at least 200 yards must be left in the middle of the stream or water course.

7—The Governor in Council may declare by proclamation the points to which the mouth of a river extends.

8—No one shall buy, sell, or have in possession salmon, knowing the same to have been taken contrary to law, all such salmon shall be declared forfeited by a Justice of the Peace.

9—Justice, Sub-collector, Preventive Officer or Fishery Warden may on view, destroy, weir rack, frame traingate or other erection or barrier erected contrary to law, or the same may be destroyed by warrant from a Justice duly obtained by complaint on oath.

10—Nets for the taking of salmon must have the mokes, meshes or scales not less than 6 inches.

Food Inspection.

11---Constable shall on view arrest any person found violating these provisions and bring the offender before a Justice of the Peace.

12---Where no specific penalty is named, for the breach of these provisions, the amount shall be not exceeding \$50, and in default of payment imprisonment not exceeding one month.

13---Penalties may be sued for summarily, before a Justice of the Peace.

FLAX SEED.—The standard weight of a bushel, 50 lbs.
Hemp Seed 44 lbs.

FLOUR.—Standard weight of barrel of flour, cornmeal and oatmeal, 196 lbs., half barrel, 98 lbs.

Food, Inspection Of.

1.—Any officer specially appointed by the Governor in Council, or Municipal Inspector appointed under the St. John's Municipal Act, 1892, for the purposes of this chapter, or any Police Constable, may at all reasonable times, and shall upon the representation of any member of a Board of Health, Public Health Officer, Municipal Supervisor or Inspector, inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn,

Food Inspection.

bread, meal, flour, butter, or milk, exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged. And if any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, meal, bread, flour, butter, or milk, appears, to such Officer, Inspector, or Constable, to be diseased, or unsound, or unwholesome, or unfit for food of man, he may seize and carry away the same himself, or by an assistant, in order to have the same dealt with by a Justice within twenty-four hours.

2.—If it appears to the Justice that any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, meal, bread, butter, flour, or milk, so seized is diseased, unsound or unwholesome, he shall condemn the same and order it to be destroyed, or so disposed of as to prevent it from being exposed for sale or used for the food of man, and the person to whom the same belongs or did belong at the time of exposure for sale or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding, for the first offence, twenty-five dollars for every animal, or carcase, or fish, or piece of meat, flesh or fish, or any poultry or game or for the parcel of fruit, vegetables, corn, meal, bread, butter or flour, or for the milk so condemned, and, in default of payment of such fine, to imprisonment for a term of not more than one month, and for a second offence a penalty not exceeding one hundred dollars for every animal, or carcase, or fish, or

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piece of meat, flesh or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, meal, bread, butter, or flour, and, in default of payment, to imprisonment for a term of not more than two months. The Justice, who under this section is empowered to convict the offender, may be either the Justice who may have ordered the article to be disposed of or destroyed or any other Justice having jurisdiction in the place.

3.—Upon complaint on oath made by any person before any Justice of the Peace, that any of the articles mentioned in the foregoing sections are being kept, or exposed or intended for sale, and are diseased, unsound or unwholesome, and upon proof thereof in a summary manner before such Justice, the like orders may be made and the like penalties and punishments inflicted as are provided by the preceding section.

4.—Any person who in any manner prevents any officer appointed under this chapter, inspector or constable, from entering at a reasonable time any premises and inspecting any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, meal, bread, butter, flour, or milk, exposed or deposited for the purpose of sale, or of preparation for sale, and intended for the food of man, or who obstructs or impedes any such officer, inspector or constable, or his assistant, when carrying into execution the provisions of this chapter, shall be liable to a penalty not exceeding twenty-five dollars, or, in default of payment, to imprisonment for a term not exceeding one month.

Food Inspection.

5.—On complaint made on oath by any officer appointed under this chapter, any member of the Board of Health, Health Warden, Municipal Supervisor, Inspector or Constable, any Justice may grant a warrant to any such officer or constable to enter any building, or part of a building, in which it shall appear that there is reason for believing that there is kept or concealed any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, meal, bread, butter, flour or milk, which is intended for sale for the food of man, and is diseased, unsound or unwholesome, or unfit for the food of man, and to search for, seize and carry away any such, animal, or other article, in order to have the same dealt with by a Justice, under the provisions of this chapter. Any person who obstructs any such officer or constable in the performance of his duty under such warrant, shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding one hundred dollars, or in default of payment, to imprisonment for a term not exceeding two months.

6.—The Superintendent of Police shall have authority, upon the request of the officer appointed under this chapter, or in any place where there is no such officer, of his own motion, from time to time to direct such members of the Police force as may be deemed necessary to do all such acts and perform all such duties as are authorized by this chapter, for the purpose of carrying into effect the provisions thereof.

7.—All penalties imposed by this chapter may be recovered in a summary manner before any Justice of the Peace.

*Forgery.***Forgery.**

Not only includes the false writing of a man's signature but any alteration, erasure or tampering with a written document with intent to defraud. It is forgery to fill up a blank cheque, to which a genuine signature is attached or to fill it up with a larger amount than it was intended to contain, or to make any other alteration or obliteration with intent to defraud. At Common Law, Forgery was only a misdemeanour but by the Consolidated Criminal Acts it is now in nearly every instance a Felony. Nearly all the complications connected with Forgery have now been swept away. It is only necessary at present to prove an intent to defraud. Where possible, the party whose name is forged should always be produced as a witness. In many cases it is impossible to prove who forged the writing. Generally prisoners are indicted for offering, uttering, disposing and putting off a forged paper, well knowing the same to be forged with intent to defraud, laying the forged paper on a merchant's desk, on whom the forged paper is drawn, or placing a forged cheque on a shop counter is offering and uttering; the intent to defraud is proved from the surrounding circumstances of the case, the statements of the accused, putting off more than one forged cheque or order, &c.

Games.

The Magistrate and Justice in Quarter Sessions may make regulations for preventing persons coasting, skating or sliding on slides or sledges down the hills, highways or

Game Laws.

streets, throwing stones in the streets, or playing any games in the highways or other places, calculated to inconvenience or annoy, and may impose a fine not exceeding five dollars for breach of such regulation. Property of parents liable under distress for penalty imposed on a minor.

Game Laws.

1—No person shall, hunt, kill, wound, take, sell, purchase or give away, or have in his possession, any Ptarmigan or Willow Grouse, commonly called Partridge, or any other kind of Grouse or Partridge, or the eggs of such birds, between the Twelfth day of January and the Fifteenth day of September in any year, under a penalty of not exceeding One Hundred Dollars, or, in default of payment, of imprisonment for a period not exceeding Three Months: Provided that it shall not be held to be unlawful to sell, receive or have possession of such Ptarmigan, Grouse or Partridge, in any case where the party against whom a complaint is made, shall prove that the said Grouse or P. idge was killed between the Fifteenth day of September and the Twelfth day of January next succeeding, provided that persons who may have Grouse in their possession on the 12th January, may sell until the 22nd January.

2—No person shall, hunt, wound, kill, take, sell, purchase, give away or have in his possession, any curlew, plover,

Game Laws.

snipe, or other wild or migratory birds (excepting wild geese or the eggs of any such birds, within this colony) from the Twelfth of January to the Twentieth of August, under a penalty of not less than \$25 or exceeding \$200, or in default of payment, imprisonment for a period not exceeding Three Months.

3---No person shall hunt, take, sell, wound or destroy any Black Game, Capercailzie, or other game birds, now or hereafter to be imported into this Colony, nor have in his possession, take or destroy the eggs or progeny of such birds for the period of Five Years from the First day of January, One Thousand Eight Hundred and Eighty-six.

4---If within the said period of Five Years any person shall have in his possession any Black Game, Capercailzie, or other game birds, or the eggs or progeny of such birds imported as aforesaid, such person shall be deemed to have killed the same, or to have the same in his possession contrary to this chapter, unless he shall prove the same are lawfully in his possession.

5---Any person violating the Third Section of this chapter shall forfeit and pay a sum not exceeding Two Hundred Dollars, nor less than Fifty Dollars, and in default of payment be imprisoned for a period of not more than Three Months, nor less than One Month.

6---No person shall hunt, kill, wound, or destroy any Moose or Elk, now or hereafter to be imported into this Colony, or their progeny, for a period of Ten Years from

Game Laws.

the First day of January, One Thousand Eight Hundred and Eighty-six.

7—If within the time specified in the foregoing Section, any person shall have in his possession the carcase of any Moose or Elk, or any part thereof, such person shall be deemed to have killed the same contrary to this chapter, unless he shall prove that the same is lawfully in his possession.

8—Any person violating the Sixth Section of this chapter shall forfeit and pay a sum of not exceeding Two Hundred Dollars and not less than Fifty Dollars, and in default of payment shall be imprisoned for any period not more than Three Months and not less than One Month.

9—Nothing contained in this chapter shall extend to any poor settler who shall kill any birds or animals mentioned in this chapter for his immediate consumption or that of his family, except the foregoing imported birds and animals.

10—No person shall, take, sell, purchase or destroy, at any time any eggs of any birds mentioned in the 3rd and 4th sections (except the Eggs of Wild Geese or Sea Fowl), under a penalty not exceeding One Hundred Dollars, and in default of payment to be imprisoned for a period not exceeding three calendar months.

11—No person shall hunt, take, kill, wound, sell, barter, receive, purchase or give away, any Wild Rabbit or

Hare within this Colony and its Dependencies, from the First day of March until the First day of September in any year, under a penalty of twenty-five dollars, and in default of payment, to be imprisoned for a period not exceeding one calendar month. Provided that it shall not be held to be unlawful to sell, barter, receive, purchase or give away such Wild Rabbit or Hare in any case where the party against whom a complaint is made, shall prove that the said Wild Rabbit or Hare was killed between the First day of September and the First day of March next succeeding: Provided that with the permission of a Magistrate such Rabbit or Hare may be taken alive at any time and in any District for the purpose of propagating the species.

12—No person shall take, kill, wound or destroy any Otters or Beavers within this Colony, between the First day of April and the First day of October in any year, under a penalty of twenty-five dollars, and in default of payment, to be imprisoned for a period not exceeding one calendar month.

13—Stipendiary Magistrates may in their respective Districts, by printed public notice, prohibit the destruction of Rabbits or Hares within any part of such District, to be described and limited in such notice for such time as may be deemed necessary for the propagation of such Rabbits or Hares in such parts of Districts, under a penalty not exceeding Twenty-five Dollars, and in default of payment to be imprisoned for a period not exceeding one calendar month.

14.—Any Constable or Peace Officer may search person whom he may have good cause to suspect of being unlawfully in possession of any Birds or Animals in this chapter mentioned, and such Constable or Peace Officer may stop and search any cart or other conveyance in which such Constable or Peace Officer may have good cause to suspect that any such Birds or Animals are being carried by such person, and should any such Birds or Animals aforesaid be found upon such person, cart or conveyance, he shall seize and detain such Birds or Animals.

15.—Upon information, upon oath, in writing, being lodged with a Justice, of any person having in his possession, by secreting in his house or other building or place, any such Birds or Animals, aforesaid, in violation of the provisions of this chapter, such Justice shall issue his Warrant, directed to any Constable or Peace Officer, to search therein; and should any such Birds or Animals, aforesaid, be found therein, such Constable or Peace Officer shall seize and detain the same and shall cite the offender before such Justice, to be dealt with according to Law.

16.—Married women concerned in any breach of the provisions of this chapter shall be liable for the penalty attaching to such breach, as if they were unmarried women or principals, but the husband of the person so offending shall not be liable to be also sued for the same offence; in the case of a married woman the fine or penalty imposed may be levied upon the property of the husband.

17.—Any person resisting any Constable or Police Officer engaged in carrying out the provisions of this

Goats and Pigs.

Chapter shall be liable to a penalty not exceeding twenty-five dollars, and in default of payment may be imprisoned for a period not exceeding six months.

18—Any Constable or Peace Officer may arrest on view any person found violating the provisions of this chapter.

19—Any offence against the provisions of this chapter, for which no penalty is hereinbefore specially provided, shall be punishable by a fine not exceeding Twenty-five Dollars, and in default of payment by imprisonment not exceeding one month.

20—All fines and penalties under this chapter shall be sued for and recovered in a summary manner on complaint before a Justice of the Peace by any person who shall inform or sue for the same, and all penalties and forfeitures imposed under this chapter shall be awarded and paid to such complainant who shall prosecute the offender to conviction, and such Justice of the Peace shall have power to award all costs and expenses consequent upon such complaint and prosecution, in addition to the penalty hereinbefore provided to be paid therewith.

Goats and Pigs.

If any goats without a good substantial yoke, of which the lower bar shall be three feet, and the upper bar not less than eighteen inches in length, or any swine shall be

Goats and Pigs.

found wandering or straying in or about any of the streets, squares, lanes or passages aforesaid, any person may impound said goats or swine in the nearest common pound, and the owner thereof, for every such goat or swine so found as aforesaid, shall forfeit and pay a sum not exceeding two dollars, together with the reasonable charges of impounding and keeping such goat or swine, and such goat or swine shall be detained until said penalty and charges shall be paid; and if the same be not paid within two days after such goat or swine shall be impounded, any stipendiary Justice, resident in the such locality, may declare such goat or swine forfeited, and on two days' notice in writing being given the same may be sold by order of the said Justice, and the expenses and penalty deducted from the proceeds of such sale: Provided, that in all towns or settlements in this island, except Harbor Grace and St. John's, swine with a yoke as aforesaid may be permitted by the Stipendiary Magistrate to go at large.

GUNS—Firing guns in any city, town, or settlement in the Colony for the purpose of creating a noise or disturbance, or without some necessary or reasonable excuse for so doing. Penalty, twenty dollars.

GUNS—Carrying guns on Sunday, except a traveller on a journey. Fine, not exceeding four dollars.

*Gunpowder, Storing of.***Gunpowder, Storing of, in the Towns of St. John's, Harbor Grace and Carbonear.**

1—No person or persons shall have or keep more than twenty-five pounds weight of gunpowder in any house, storehouse, warehouse, shop, cellar, yard, wharf, or other building, occupied or used by the same person or persons in the towns of St. John's, Harbor Grace or Carbonear or within one mile thereof, (all buildings and places adjoining each other and occupied together to be deemed one house or place within the meaning of this chapter,) save and except in a magazine near the Crow's nest in the town of St. John's or in any magazines existing now in the towns of Harbor Grace and Carbonear or in any other public magazine or magazines which may hereafter by lawful authority, be appointed for the safe storing of gunpowder.

2—Not more than twenty-five pounds weight of gunpowder shall be kept at any one time in any one ship, boat or other vessel, in the harbor of St. John's, Carbonear or Harbor Grace longer than twenty-four hours after such ship, boat or other vessel, shall have come alongside of any wharf, or alongside of any other ship, brig, schooner, or other vessel, or shall be anchored, moored or stationed within any distance less than fifty fathoms from any wharf, or other building: Provided always, that this chapter shall not extend, or be construed to extend, to any ship or vessel of war belonging to Her Majesty, or to any ship or other vessel employed in the public service of the Government.

3—It shall and may be lawful for any Magistrate or Justice of the Peace, residing within the judicial districts

Gunpowder, Storing of.

in which the said towns are respectively situated, on complaint made upon oath by any constable or other person, that he has reasonable cause to suspect that any quantity of gunpowder is deposited or kept in any house, storehouse, warehouse, or other building or place as aforesaid within the said towns or the limits aforesaid, or on board any ship, boat or vessel, in either of the said harbors, contrary to the provisions of this chapter, to issue his warrant to one or more constables to search for the same in the day time; and for that purpose, admittance being first demanded by such constable or constables, and refused by the proprietor or occupant of any such house, storehouse or other building or place as aforesaid, or by the master or other person in charge or command of any ship, boat or other vessel, in the harbors aforesaid, wherein it is so suspected that gunpowder is unlawfully kept or deposited, it shall and may be lawful for such constable or constables, if there shall be occasion, to break open any such house, storehouse, or other building or place as aforesaid, or any such ship, boat or other vessel as aforesaid, and to enter into, examine and search the same; and if upon any such search or examination, a greater quantity of gunpowder than by this chapter is allowed shall be found by him or them, it shall and may be lawful for any such constable or constables to seize the same, and he or they shall without delay remove the gunpowder so seized and deposit the same in the magazine; and without delay then give information and make complaint of such seizure before one of Her Majesty's Justices of the Peace aforesaid, who shall thereupon summon such owner or owners of the gunpowder so seized, or person in whose house, store or other building or place, or in whose ship,

Gunpowder, Storing of.

boat, or other vessel, or in whose keeping the said gunpowder was found, requiring the said party to appear and answer or defend the said information or complaint, which shall by the said Justice be heard and determined in a summary way; and if the said person so summoned shall make default in appearance to the said summons, or after appearance and a due hearing of said complaint or information the said Justice shall convict the defendant, the said Justice shall make order for the confiscation and sale of the said gunpowder, and the constable or constables who seized the same shall sell it by public auction, and after payment of such reasonable costs as the said Justice shall award to be paid out of the proceeds of the said sale, one half of the net residue of the said proceeds shall be paid to the informer, and one half be applied towards defraying the expenses of the fire companies of the said town.

4—If any person or persons shall have or keep any larger or greater quantity of gunpowder than twenty-five pounds at any one time, in any house, storehouse, warehouse, shop, cellar, yard, wharf, or other place, within the said towns or within one mile of the same (except as hereinbefore excepted), or shall have or keep any larger or greater quantity of gunpowder than twenty-five pounds, at one time, in any one ship, boat or other vessel, in the said harbors, longer than twenty-four hours after such ship, boat or other vessel, shall have come alongside of any wharf or alongside of any other ship, brig, schooner or other vessel, or shall be anchored, moored or stationed within any distance less than fifty fathoms from any wharf or other building contrary to the provisions of this chapter,

Gunpowder, Storing of.

all such gunpowder over and above the aforesaid allowed weight of twenty-five pounds shall become forfeited, and all and every such person being owner of the said forfeited gunpowder, and the person having the same in charge or keeping, and the occupant of the house, storehouse or other building or place wherein the same shall be unlawfully deposited or kept, and the owner or master of the ship, boat, or other vessel wherein such gunpowder shall be unlawfully deposited or kept, shall, on due conviction of having wilfully done anything contrary to the provisions of this chapter, whereby any such gunpowder aforesaid shall become liable to forfeiture, respectively forfeit and pay for the first offence fifty dollars, for the second offence one hundred dollars, and for the third offence one hundred and fifty dollars, to be recovered at the suit of any constable of the towns, or other person in the Supreme or Sessions Court of this island, together with full costs of suit; one half of the moneys so recovered to be paid to the constable, or other person, who shall inform and sue for the same, and the other half to Her Majesty, to be applied towards defraying the expenses of the fire companies of the said towns: Provided always, that such proceeding shall be commenced within twelve months next after such forfeiture or penalty shall be incurred.

V.—For all gunpowder stored or placed in the said magazines and taken out of the same within one year, the following rates and prices shall be paid, that is to say, for every barrel fifty cents; for every half barrel thirty cents; and for every quarter barrel twenty cents, and if such gunpowder shall be stored in the said magazines for any greater time than one year, then there shall be paid for

Gunpowder, Storing of.

every hundred pounds weight of the same, at and after the rate of fifty cents per annum.

VI.—All gunpowder which, in pursuance of the provisions of this chapter, shall be carried to and removed from the said magazines or any other magazines, hereafter to be built, under the provisions of this chapter; shall at all times be conveyed and carried by water, as far forth as the same can be water-borne,

VII.—The town of Harbor Grace for the purposes of this chapter, shall extend from Bear's Cove to Ship's Head inclusive, and one mile from high water mark within the limits aforesaid.

VIII.—The town of Carbonear for the purposes of this chapter shall be included and comprehended within a line extending from Crocker's Cove Point to Mosquito Point, and including all buildings erected within one mile of high water mark on the northern and western sides, and within one quarter of a mile of the southern side of the said harbor of Carbonear.

IX.—The provisions of this chapter shall not extend or be applied to the storing, warehousing or keeping of any gunpowder being the property of Her Majesty in any of Her Majesty's storehouses, warehouses, depots or magazines in this island.

Harbour.

Throwing stones, or ballast, or anything else hurtful or injurious into any Harbour or Roadstead in Newfoundland.

Hard Labor.

or Labrador. Penalty not exceeding \$40. This is one of the most ancient laws of Newfoundland.

HARD LABOUR.—In all sentences under Summary Jurisdiction, Magistrates may sentence an offender to hard labour.

HARES.—See Game Laws.

HAY.—All hay imported for sale in screwed or pressed packages, shall be weighed by the Vendor, who shall attach to each package or bundle of hay a ticket marked with the weight thereof. If desired by purchaser at the time of delivery the hay shall be weighed by Vendor in presence of purchaser. Penalty for refusal to reweigh \$10.

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*Boards of Health.***Health Public—Of Boards of Health, Health Officers and Quarantine—Vaccination.**

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| 1.—Power to Governor in Council to make quarantine orders. | 15.—Definition of "Nuisance." |
| 2.—To be notified by Proclamation. | 16.—Powers of Board of Health to isolate and quarantine. |
| 3.—To have the force of law. | 17.—Powers of St. John's Municipal Council. |
| 4.—Governor in Council may appoint officers. | 18.—Penalty for refusing to comply with regulations, &c. |
| 5.—Custom officers and pilots to be subject to orders of Governor in Council. | 19.—Servants of Boards of Health protected. |
| 6.—May appoint Boards of Health. | 20.—Powers to Governor to affix imprisonment or other penalties. |
| 7.—May appoint Medical Health officer. | 21.—Power to Governor in Council to award compensation. |
| 8.—Duties of Boards of Health. | 22.—Vessels to be charged with rates or fees. |
| 9.—Powers of Boards of Health. | 23.—One month's notice of action to be given. |
| 10.—Additional powers to Boards of Health or Justices. | 24.—Appointment of Public Health officer. |
| 11.—Penalty for interfering with Medical Practitioners. | 25.—Medical Practitioners to report certain diseases. |
| 12.—Duties of Householdors. | 26.—Establishment of Quarantine. |
| 13.—Persons suffering from contagious disorder, exposing himself, subject to penalty; duties of drivers of vehicles, &c. | 27.—Power of Governor in Council to make rules for preservation of public health. |
| 14.—Powers to enter places suspected to be dangerous, &c. | 28.—Procedure; appeal. |

1.—The Governor in Council may make such general and particular Quarantine orders and regulations applicable to vessels, goods, persons and things, being within this Colony or imported hither from abroad, as he may deem expedient for preventing the introduction or spread of contagious or infectious disease, and may affix penalties, forfeitures and punishments for the breach of any such general or particular orders and regulations, and for the breach or violation of any provision of this chapter, except when otherwise provided.

2.—The said general orders and regulations shall be

Boards of Health.

notified by Proclamation or published in the *Royal Gazette*, and the production of any such Proclamation or publication shall be evidence of the making, date and contents thereof. Particular orders may be proved either by the production of the original or of a paper purporting to be a copy thereof, certified to be such under the hand of the Colonial Secretary.

3.—Such general and particular orders and regulations shall have the force of law while they remain unrevoked; their expiry, revocation or amendment shall not prevent any person liable for a breach or violation, during their operation, from being tried and punished therefor within twelve months after the expiry of such order or regulation.

4.—The Governor in Council shall appoint all necessary officers for the due execution of the foregoing provisions of this chapter, and the orders and regulations to be made thereunder, and shall define their respective duties and authority,

5.—Custom House officers, masters of tug boats, and licensed pilots, shall be subject to the orders of the Governor in Council, for the purpose of aiding in execution of the provisions of this chapter and the regulations and orders to be made thereunder.

6.—The Governor in Council may appoint Boards of Health and define the extent of the district over which their authority shall extend. Boards of Health shall make rules and regulations for the preservation of the public

Boards of Health.

health and for rendering effectual all measures of precaution against the outbreak or spreading of disease, such rules and regulations to have the force of law when approved of and published, by the authority of the Governor in Council, in the *Royal Gazette*.

7.—The Governor in Council may also, when and for such time as may be considered necessary, appoint a Medical Health Officer, whose duty it shall be, subject to the directions of the Governor in Council, to co-operate and advise with the Board of Health in all matters pertaining to the public health. The Governor in Council shall fix the amount of remuneration to be paid to such Medical Officer.

8.—It shall be the duty of Boards of Health, periodically and personally, or by qualified deputies, to inspect all parts of the district under their control, and in case of the existence of any condition in their opinion noxious to the health of the inhabitants, the board shall cause such conditions to be removed, and in case of the appearance or danger of the appearance of any contagious or infectious disease, it shall be the duty of the Boards of Health to meet not less than twice a week, and by means of isolation, quarantine and disinfection applicable to all persons, places and things, and otherwise to take all steps necessary or desirable to prevent the spread of such disease.

9.—The Boards of Health may order or cause any building, place, vessel or boat, to be whitewashed, fumigated, or otherwise purified, at the expense of the owner or tenant, and may order or cause anything dangerous to the public health to be removed or destroyed.

Boards of Health.

10.—Any Board of Health, or, where none exists, any Justice may order to be removed from any dwelling house or place, or from any vessel or boat approaching near to or within any place or port, any person sick with any contagious or infectious disease to any hospital, house or place proper for that purpose, it being first certified by a medical practitioner, when available, that such removal is necessary for the public health. And if any person be sick with any infectious or contagious disease in any house or place, and such person cannot, in the opinion of such medical practitioner be removed, then the Board of Health, or Justice, as the case may be, may cause such house or place, or any contagious house or place, to be vacated by other occupants, suitable provision being made for them by such Board or Justice, for such time as the safety of the inhabitants shall require.

11.—Where any person is sick with contagious disease, or is suspected to be so, and no medical practitioner is in attendance on such person, the Board of Health may send a medical practitioner to visit such person. Any person interfering with or preventing the visit of such medical practitioner shall be liable to a penalty not exceeding three months. Every medical practitioner shall immediately make a report to the Board of Health of every contagious or infectious disease, so visited by him, under a penalty not exceeding fifty dollars.

12.—It shall be the duty of any householder, so soon as he shall become aware that any occupant of his house is suffering from an infectious or contagious disease that

Boards of Health.

may be detrimental to the public health, to give notice of such disease to the Chairman of the Board of Health, or a Justice of the Peace, as the case may be, under a penalty not exceeding fifty dollars.

13.—Any person suffering from any contagious or infectious disorder who wilfully exposes himself, without proper precaution against spreading the said disorder, in any street, public place, or public conveyance, and any person in charge of one so suffering who so exposes the sufferer, and any owner or driver of a public conveyance who does not immediately provide for the disinfection of his conveyance after it has, with the knowledge of such owner or driver, conveyed any such sufferer, and any person who, without previous disinfection, gives, lends, sells, conveys, transmits or exposes any bedding, clothing, rags or other things which have been exposed to infection from such disorders, shall, on conviction before a Justice of the Peace, be fined a sum not exceeding one hundred dollars, or, in default thereof, to imprisonment for a term not exceeding three months: Provided that no proceedings shall be taken against persons transmitting, with proper precautions, such articles for the purpose of having them disinfected by order of the Board or a medical man.

14.—Any Board of Health, or any officers duly authorized by such Board, may open and enter and inspect private places where noxious substances dangerous to the public health may be reasonably suspected to exist, and shall order all nuisances and filth to be removed therefrom or destroyed; and if the same shall not be removed or destroyed within twenty-four hours after such order, the person neg-

Boards of Health.

lecting or refusing to obey such order shall be liable to a penalty not exceeding twenty dollars; or the Board may, in their discretion, cause the same to be removed or destroyed, and may recover the expenses of so doing in a summary manner in the name of the officer inspecting, from the person so offending.

15.—The word "nuisance" under this chapter shall include any premises in such a state as the Board of Health or Justice, as the case may be, may consider injurious to the public health; any pool, ditch or gutter, water-course, privy, urinal, cess-pool, drain or ash-pit, so foul as to be injurious to the public health; any accumulation or deposit which is injurious to the public health.

16.—Boards of Health shall have the power to isolate and quarantine any person, house or place or thing, during or in anticipation of an epidemic that they may consider likely to be injurious to the public health. They may cause all nurses, practising as such, to be registered in a register to be kept by the chairman of the Board of Health for that purpose, and make rules for their guidance during the time of epidemic, as provided for under section six of this chapter, and may take any other measures whatever in their judgment desirable for the more effectual carrying out of the purposes of this chapter.

17.—The St. John's Municipal Council, their superintendents, inspectors, officers and servants, shall have full power and authority to carry into effect all rules, regula-

Boards of Health.

tions, orders and directions from time to time made by the Board of Health, and considered necessary for the preservation of the public health.

18.—Any person, without sufficient cause, refusing to obey or comply with any order of the Board of Health, shall be liable, for every offence, to a fine of not exceeding fifty dollars, or imprisonment not exceeding one month. And any person unlawfully hindering, obstructing, or assaulting any servant or officer of the Board of Health, or other person acting under their authority, in the performance of his duty, shall be liable to the same penalties as are provided for hindering, obstructing or assaulting a police constable in the execution of his duty.

19.—The servants and officers of the Board of Health and all persons acting under their authority in carrying into effect the provisions of this chapter, shall have, and be entitled to all the protection, privileges and immunities pertaining to Police Constables and officers in the discharge of their duties.

20.—The Governor in Council shall, amongst the general orders to be made under this chapter, adjudge and affix the imprisonment, penalties and forfeitures that shall attach against any person or vessel, and the estate and effects of any person who shall violate the provisions of this chapter, or of any general or particular order made thereunder. In cases of violation of this chapter or of any rules and regulations made thereunder where no particular

Boards of Health.

punishment is otherwise provided by this chapter, the offender, on conviction, shall be liable to a fine not exceeding one hundred dollars, or in default thereof, to imprisonment for a term not exceeding six months.

21.—The Governor in Council may make compensation out of the general revenue of the Colony to any person whose property, goods or effects may be destroyed or damaged in carrying into effect the provisions of this chapter; but nothing herein contained shall be construed as conferring any claim or creating any liability on the part of any person whomsoever for any indirect or consequential damage or otherwise by reason of anything lawfully done or caused to be done under the authority of this chapter.

22.—All vessels, and any particular class of vessels, and all vessels in particular, any or either of them, shall, from time to time, at particular times, or at all times when the Governor in Council may deem it expedient, be subject to and chargeable with such fees and dues, either rates on the tonnage or otherwise as may be directed by any general or particular order, and such fees and dues shall be a lien on the vessel before all other claims, and no vessel shall be entered or cleared outwards at the Custom House, if such fees and dues be not duly paid, and the masters and owners of any such vessel shall be liable for such fees.

23.—If any action shall be commenced against any person for any matter or thing done in pursuance or execution of this chapter, or of any order made by virtue

Boards of Health.

hereof, the defendant in such action may plead the general issue and give this chapter and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and in the execution of this chapter; and no such action shall be brought against any person, for any matter or thing done in pursuance of this chapter, but within the space of three months after such matter or thing shall have been done, and without giving the defendant one month's notice in writing. All such actions shall be tried summarily before a Judge of the Supreme Court, and if the question be one of compensation for any loss or damage sustained by any person under the operation of this chapter, the defendant shall have the right to have such question tried by one arbitrator, and if the parties cannot agree upon one, the said arbitrator shall be appointed by a Judge of the Supreme Court and his award shall be final and binding upon the parties.

24.—Where there shall be no Board of Health, the Governor in Council may, as occasion requires, appoint a Stipendiary Magistrate, a Justice of the Peace, or other person, to be a Public Health Officer in any district to be named and defined in such appointment, who shall exercise all and singular the powers of a Board of Health under this chapter within the district so named and defined. And in case no Board of Health or Public Health Officer shall have been appointed, a Stipendiary Magistrate or Justice of the Peace may exercise all the said powers of a Board of Health.

25.—In all cases of small-pox, diphtheria, scarlet fever, typhus fever, typhoid fever, measles, and Asiatic

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cholera, every medical practitioner who shall attend on such disease shall immediately, or within twelve hours after he has ascertained the fact of such disease, report the same in writing to the Board of Health or the Public Health Officer appointed under the next preceding section of this chapter within whose district such disease or diseases may arise or to a Stipendiary Magistrate or Justice of the Peace acting in the absence of a Board of Health or Public Health Officer, under a penalty for each offence of not less than ten nor more than fifty dollars, to be recovered in a summary manner before a Stipendiary Magistrate. For every such report such medical practitioner shall receive a fee of twenty-five cents: provided always, that the Board of Health or Public Health Officer, appointed under the next preceding section of this chapter, may at any time, by notice in writing to any medical practitioner, require him to report contagious or infectious diseases other than those in this section before-mentioned; such notice to the medical practitioner shall always specify the name of the disease to be reported and the period of time for which such reports shall be required.

26—Whenever a Board of Health or the Public Health Officer appointed under section 24 of this chapter, or Stipendiary Magistrate or Justice of the Peace acting as such, may deem it necessary to establish quarantine for the purpose of checking or preventing contagious diseases, the persons employed by the said Board of Health or Public Officer, or Stipendiary Magistrate or Justice of the Peace acting as such, to maintain such quarantine, may use all necessary force to prevent any one entering or leaving any dwelling house, building, place, boat or vessel where such

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quarantine has been established, except members of the medical or clerical profession, or officials under the direction of the Board of Health or Public Health Officer appointed under this chapter, or Stipendiary Magistrate or Justice of the Peace acting as such. Any one interfering with, obstructing or disobeying the lawful commands of persons so employed by the Stipendiary Magistrate, Justice of the Peace, Board of Health or Public Health Officer, shall be subject to a fine not exceeding fifty dollars, or in default of payment, imprisonment not exceeding twenty days.

27—The Governor in Council may make rules and regulations for the preservation of the public health and for rendering effectual all measures of precaution against the outbreak or spreading of disease, and may also affix penalties for the breach of said rules and regulations, with a maximum penalty of one hundred dollars fine for breach of any of said rules or regulations, and, in default of payment, imprisonment not exceeding thirty days. Said rules and regulations when published in the *Royal Gazette* to have the force of law as if embodied in this chapter.

28—All offences against the provisions of this chapter, or any rule or regulation made thereunder, may be tried summarily before any Stipendiary Magistrate. Any person subject to imprisonment or fine under this chapter may appeal from the judgment or order of such Magistrate to the Supreme Court on giving sufficient security to prosecute such appeal and to abide by and perform the order or decree of the Court therein; and on the hearing of such appeal such Court may admit other evidence than that adduced

Vaccination.

before the Magistrate, and may confirm, vary or set aside the judgment of such Magistrate, and make such order as to the execution of any judgment, as to such Court, may seem meet. The appeal provided by this section may be heard before one Judge sitting as the Supreme Court either in St. John's or on circuit.

Vaccination.

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| 1.—Governor in Council may put in force provisions of this chapter. | a new offence. |
| 2.—Duty of Vaccinators. | 5.—Provisions for compensation ; for paupers. |
| 3.—Penalty for contravention of chapter. Refusal to pay vaccination fee; penalty; proviso. | 6.—Governor in Council to appoint vaccinators. |
| 4.—Power of Justice; every subsequent refusal to constitute | 7.—And to make regulations. |
| | 8.—Meaning of term "children." |
| | 9.—Provisions for persons not paupers. |

1—The Governor in Council may, by proclamation, put in force the provisions of this chapter in this Colony and its dependencies, or in any district or part thereof.

2—When this chapter shall have been put into operation in any district or place, the Vaccinators shall carry out the provisions of this chapter by making enquiries as to such persons as have not been effectively vaccinated, or who have not already had small-pox, and shall require them to be vaccinated; or, in the case of children, shall require their parents or guardians to submit such children for vaccination.

3—Any parent or guardian of any child so required to be vaccinated, or any other person acting in contravention

Vaccination.

of, or failing to comply with the provisions of this chapter, or any person wilfully obstructing a vaccinator in carrying out the provisions of this chapter, or any person vaccinated under this chapter not coming within the provisions of section five of this chapter, who, upon the performance of such vaccination, shall refuse or neglect to pay the vaccinator the fee herein prescribed, shall incur a penalty not exceeding two dollars for every offence, and in default of payment thereof, shall be liable to be imprisoned for a period not exceeding one week: Provided that any person refusing to be vaccinated, or any parent or guardian refusing to submit a child for vaccination, shall not be liable to any penalty, if it shall be made to appear that there is a satisfactory reason as regards health for such person or child not being vaccinated; but the burthen of shewing such cause shall rest with the party charged.

4.—In any proceeding under this chapter, the Justice may, with or without inflicting a penalty, make an order that vaccination shall take place; and every subsequent refusal or neglect to obey such order shall be deemed to be a new offence.

5.—Upon the production of a detailed statement, giving the name of each person vaccinated by him, sworn to by the Vaccinator before, and certified by a Magistrate, and upon the production of a certificate by a Poor Commissioner that such person is a pauper or on the pauper list, or a certificate by a Magistrate, Justice, Clergyman, or Poor Commissioner, that such person is unable to pay the prescribed fee, the Vaccinator shall be entitled to receive re-

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muneration from the Colony at the rate of twenty-five cents for every such person upon whom the operation of vaccination has been successfully performed.

6.—The Governor in Council shall appoint Vaccinators for the purposes of this chapter.

7.—The Governor in Council may make regulations for the more effectual execution of this chapter, and such regulations shall have the same force as if embodied in this chapter.

8.—Children in this chapter shall mean persons under the age of eighteen years.

9.—In cases other than those provided for in section five of this chapter, the fee payable to Vaccinators for each vaccination performed shall be twenty-five cents.

The following suggestions for checking the spread of contagious disease were prepared by the late Dr. Hubert, and are substantially in accordance with the latest medical science.

RULES AND SUGGESTIONS

**For Checking the Spread of Contagious Diseases:
Scarlet Fever, Diphtheria, Small Pox, Cholera,
Etc.**

(ISSUED BY THE BOARD OF HEALTH, ST. JOHN'S, Nfld.)

These diseases are spread by means of minute living organisms transmitted directly or indirectly from person to person, and *can be prevented if care and systematic means are taken* to destroy these disease germs, while yet limited to the sick-room.

The parts of the body which are the *breeding places* of the contagious organisms give them off in the greatest amount. These parts are:

- In Scarlet Fever: the mouth, throat, nasal passages and skin.
- " Diphtheria: the mouth, throat, ear and nasal passages.
- " Small-pox: the pustules, chiefly of the skin.
- " Measles: the skin and air passages.
- " Whooping Cough: the air passages.
- " Typhoid Fever and Cholera: the discharges from the bowels

The particles given off from the body, and containing

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these organisms may pass into the *air*, or find their way into *water or food*, and so be introduced into the system by breathing, drinking or eating, or through abraded surfaces.

The first five diseases in the above enumeration are commonly disseminated by means of the atmosphere. The special contagia of these five remain virulent for a great length of time, and may be carried a considerable distance by the air without losing their activity; Typhoid and Cholera, while sometimes communicated by the air, are peculiarly liable to be transmitted by means of water. The two last named diseases, as well as Scarlet Fever and Diphtheria, may be communicated by means of milk or other articles of food.

Published by Authority.

The following Rules and Regulations made by the Board of Health for St. John's are approved of, and their publication authorized by HIS EXCELLENCY THE GOVERNOR in Council.

R. BOND,

SECRETARY'S OFFICE,
15th March, 1890.

Colonial Secretary.

*Boards of Health.***RULES AND REGULATIONS**

MADE BY THE BOARD OF HEALTH, FOR THE ELECTORAL DISTRICT OF ST. JOHN'S, UNDER AND BY VIRTUE OF SECTION 7, OF THE "PUBLIC HEALTH ACT," 1889, FOR RENDERING EFFECTUAL ALL MEASURES OF PRECAUTION AGAINST THE OUTBREAK OR SPREADING OF DISEASE.

SPECIAL RULES FOR THE PREVENTION OF DIPHTHERIA.

1.—No householder, in whose dwelling there occurs a case of diphtheria, shall permit any person suffering from the disease, or any clothing, or other property, to be removed from his house, without the consent of the Board of Health.

2.—No person, sick with diphtheria, shall be removed at any time, except by permission and under the direction of an officer of the Board of Health or the attendant physician, nor shall any occupant of any house, in which this disease exists, change his or her residence to any other place without the consent of an Executive Officer of the Board of Health, who shall prescribe the conditions under which such removal shall take place.

3.—No person affected with diphtheria, and no person having access to any person affected with the said disease, shall mingle with the general public, until such sanitary precautions, to the satisfaction of the Board of Health, or

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its duly authorized officer, shall have been complied with ; nor shall any such person expose him or herself in any public place, shop, street, inn, or public conveyance, without having at first adopted the precautions prescribed by the said Board of Health. This rule does not apply to the attendant physician, a clergyman, or member or officer of the Board of Health.

4.—All persons named in the last preceding Rule are hereby required to adopt, for the disinfection of clothing, bedding, utensils, and other effects which have been exposed to infection, such measures as shall be prescribed by the said Board.

5.—No person suffering from diphtheria, or having very recently recovered from diphtheria, shall expose himself, nor shall any person expose any one under his charge, who is so suffering, or who has recently recovered from this disease, in any conveyance without having previously notified the owner or person in charge, of the fact of his recently having had the disease.

6.—The owner or person in charge of any such conveyance must not, after the entry of any so infected person in his conveyance, allow any other person to enter it, without having sufficiently disinfected it, under the direction of an officer of the Board of Health.

7.—No person shall give, lend, transmit, sell or expose, any bedding, clothing, or other article likely to convey diphtheria, without having first taken the precautions pre-

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scribed by the said Rules of the Board of Health, for removing all danger of communicating the disease to others.

8.—No person shall let or hire any house or room, in which diphtheria has recently existed, without the written permission of the Board of Health.

9.—In the case of the death of any person suffering from diphtheria, the officer of the Board of Health shall at once, upon notification of the death, superintend the preparation of the body for interment; he shall cause it to be enveloped in a sheet thoroughly saturated with a solution of mercuric chloride, in the proportion of one in $\frac{1}{500}$ parts (five drachms to the gallon), and another sheet shall also be applied to prevent evaporation. And as soon as possible the body shall be placed in a coffin and surrounded by a quantity of chloride of lime, and the coffin shall be immediately thereafter closed. It shall be the further duty of the Board of Health officer to see that the funeral be strictly private, and all infected apartments, clothing, and other effects, be speedily and thoroughly disinfected, and that no such apartments be entered or occupied by members of the family or other persons until they have been so disinfected.

10.—Any person violating any of the above Rules will be liable to a penalty of not exceeding fifty dollars.

GENERAL RULES FOR THE PRESERVATION OF THE PUBLIC HEALTH.

11.—The Chairman shall furnish all Medical Practitioners within the Electoral District of St. John's with blank forms, with which the said Medical Practitioners

Boards of Health.

shall report to this Board any case of diphtheria, smallpox, scarlet fever, cholera, typhoid fever, measles, whooping cough, or other disease dangerous to the public health, immediately after discovering such disease.

12.—The Chairman shall furnish all Medical Practitioners within the Electoral District of St. John's with blank form, upon which the said Medical Practitioners shall report to this Board the death or recovery of any person from diphtheria, small-pox, scarlet fever, cholera, typhoid fever, measles, whooping cough, or other disease dangerous to the public health, immediately after such death or recovery becomes known to any Medical Practitioner.

13.—All such forms shall be so printed, gummed and folded that they may be readily closed without the use of an envelope, so as to keep them from perusal until opened by the Chairman or the Secretary, or such other person as the Board may appoint. The said forms shall be sent by the Medical Practitioner using the same to the Board of Health office.

Boards of Health.

The said blanks shall be in the following forms:—

FORM 1.

CHAIRMAN BOARD OF HEALTH OR PUBLIC HEALTH OFFICER.

REPORT OF INFECTIOUS DISEASE, ST JOHN'S, 189

1. Name of patient.....
2. Age.....
3. Residence.....
4. No. Street.....
5. Disease.....
6. How contracted.....
7. No. of families in the house.....
8. No. of children attending school.....
9. No. of inmates attending Sunday school.....
10. What schools.....
11. Condition of premises.....
12. Measures adopted for isolation and disinfection.....
13. If patient sent to Hospital.....

.....
Doctor's signature.

FORM 2.

CHAIRMAN BOARD OF HEALTH OR PUBLIC HEALTH OFFICER.

REPORT OF DEATH OR RECOVERY (INFECTIOUS DISEASE.)

ST. JOHN'S, ——— 189

1. Name of patient.....
2. Age.....
3. Residence.....
4. No. Street.....
5. Disease.....
6. How long sick.....
7. Whether dead or recovered.....
8. Means of disinfection employed and when employed.....

.....
Doctor's signature.

Boards of Health.

14.—Any Medical Practitioner violating the foregoing Rules and Regulations shall be subject to a penalty not exceeding fifty dollars.

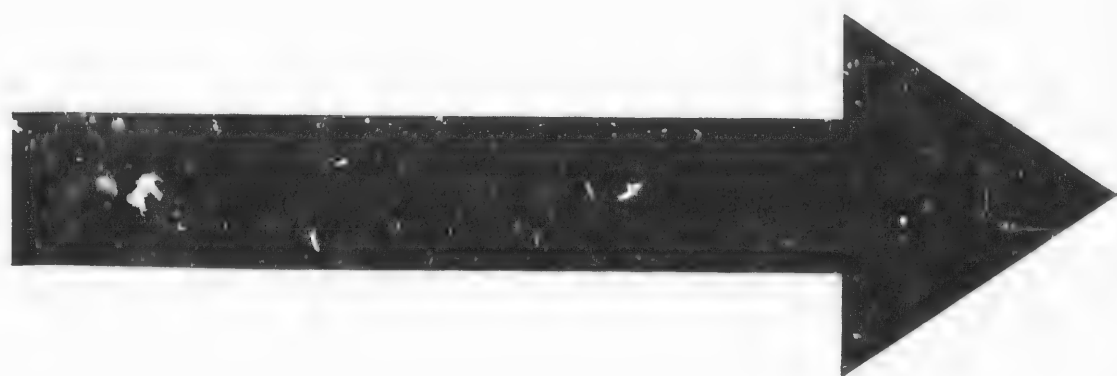
15.—No pupil from any infected house or place shall be permitted to attend school until he produces the certificate of a medical man that all danger of his mingling with other pupils has passed away.

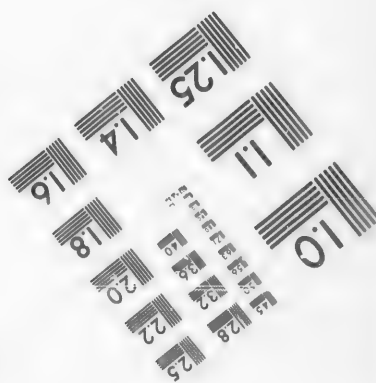
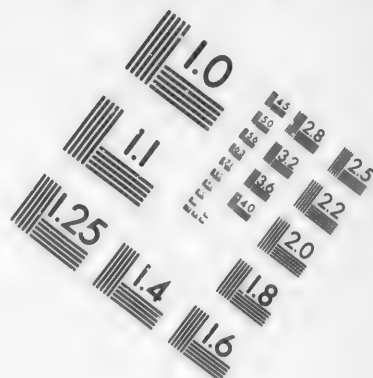
16.—Any teacher or person in charge of a school upon reasonable grounds of suspicion or belief that a pupil is dangerous to the health of the school by reason of such pupil coming from an infected house or place, must preclude such pupil from attending school until he produces a certificate as is described in preceding Rule.

17.—Any pupil, or the parent or guardian of such pupil, or any other person violating Rules and Regulations 15 and 16, shall be subject to a penalty not exceeding fifty dollars.

18.—Any person going into or coming out of any infected house or dwelling after the same has been placarded by the said Board of Health, without the authority of such Board, other than a Medical Practitioner or Clergyman, or member or officer of the Board of Health, shall be subject to a penalty of not exceeding fifty dollars.

19.—The Board of Health shall have power to placard every house or building in which any case of infectious disease may occur within the placarded district or St. John's.





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Boards of Health.

20.—Any person found defacing, tearing or removing from any house or building any placard of the said Board of Health, without the authority of said Board, shall be subject to a penalty of not exceeding twenty dollars.

21.—Any house or building placarded by the said Board shall remain so placarded until the same has been thoroughly disinfected, and the placard removed by order of the Board of Health.

22.—The Board of Health reserves to itself the right of superintending the work of disinfecting all infected houses or buildings.

23.—Any dairyman or milk vendor, who has been ordered by the Health Inspector to clean up the cow byres and premises upon which cattle or milk is kept, and who within twenty-four hours does not comply with such order or orders, shall be subject to a penalty of not exceeding twenty dollars.

24.—Every householder upon becoming aware of the existence of any infectious disease in his or her house, shall immediately report the same to the Board of Health, and in default thereof shall be subject to a penalty not exceeding fifty dollars.

25.—Any Medical Practitioner who shall become aware of the existence of any case of infectious disease, for which he has been consulted professionally, and who shall not report the same to the Board of Health as soon as pos-

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sible, or within twelve hours, shall be subject to a penalty not exceeding fifty dollars.

26.—Whenever any person shall die of diphtheria, small pox, cholera, typhoid fever, or other infectious disease, the Board of Health and its servants shall have power to take charge of the dead body, and prepare the same for burial.

27.—No person shall, within the electoral district of St. John's, suffer the accumulation upon his premises, or deposit, or permit the deposit, upon any lot belonging to him, of anything which may endanger the public health, or deposit upon, on, or into, any street, square, lane, by-way, wharf, dock, slip, lake, pond, bank, harbor, river, stream, sewer, or water, any manure or other refuse, or vegetable or animal matter, or other filth, under a penalty not exceeding twenty dollars.

28.—The Board of Health and its officers may at all times enter and inspect all houses and buildings where there is actual or suspected disease, and give all necessary orders and directions for the isolation and quarantining and general management of such house and its inmates as may be deemed by the said Board or its officer necessary for the preservation of the public health.

29.—The Board of Health, with the sanction of the Government, may appoint, when occasion may require, a corps of sanitary police, which shall be under the control of the Board. The said sanitary police shall wear a yellow band on the left arm; their duties shall be defined by the Board.

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30.—No parent or guardian shall allow a child under their care to attend school from a house where there is any one ill, with ut a medical certificate that such illness is not of an infectious character. Penalty not exceeding fifty dollars, or in default, not exceeding three months' imprisonment.

31.—No inmate of any infected house shall attend any place of worship or public gathering, and no such inmate shall engage in any *indoor* occupation which, in the opinion of the Board of Health, may be the means of spreading infection. Penalty not exceeding fifty dollars or imprisonment not exceeding three months.

32.—Any person coming or having been removed from any house or place, where there is any one suffering from sore throat, to any other house or place, except the Board of Health Home, without a medical practitioner's certificate that such sore throat is not of an infectious nature, then such latter house or place to which such person has been removed shall be quarantined for such period of time as the Board of Health may deem necessary; and such house or place, and the inmates thereof, shall at the discretion of the Medical Health Officer of the Board of Health, be subject to the Rules and Regulations of the Board of Health, in the same manner as they now apply to any house in which there is a case of Diphtheria, and to the inmates of such house.

Boards of Health.

33.—No person having recovered from Diphtheria shall attend any School or place where children assemble in large numbers, until after the expiration of One Month from the date of a Medical Practitioner's certificate of such recovery ;

Nor shall any inmate of a house in which recovery or death from Diphtheria occurs, attend any School or place as before mentioned, until after the expiration of One Month from the date of a Medical Practitioner's certificate of such recovery or death. Penalty not exceeding fifty dollars, or imprisonment not exceeding three months.

HEALTH RULES.

To be observed in the Sick Room in cases of Contagious Diseases.

1.—The patient must be separated at once from the rest of the household. He must be put in a room on the topmost flat of the house, if possible in one at the end of a passage way. All carpets, curtains, articles of dress, pictures, books, toys, etc., not absolutely needed by the patient, must previously be moved. There should be plenty of sunlight and good ventilation. The patient's bed should be placed in the centre of the room.

2.—All discharges from the throat, nose, ears or mouth of the patient, should be received on rags and these should then be immediately burnt. Discharges from the bowels in cases of Typhus, Typhoid, Scarlet Fever and Cholera, should be thoroughly disinfected before removal from the sick room and they should be buried deeply, at least one hundred feet from any water supply.

3.—Let one person only as far as possible do all the nursing. Never allow others, *especially children*, to enter the room, even if they have had the disease.

4.—Clothing, bed linen, towels, etc., which have been used by the patient, should, immediately on removal, be dropped into a bucket or tub containing the disinfecting solution, and should be allowed to soak in this fluid for at least three hours before being taken out of the room.

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5.—No one must enter the sick room except those absolutely necessary for the care of the patient, and those persons should wear clothing that can be frequently changed, disinfected, washed in boiling water, and dried, if practicable, in the open air.

6.—No article of food or drink, which has been once in the sick room, should be used by any other person, and the cups, plates, forks, spoons, etc., which have been used by the patient, should be thoroughly cleansed and disinfected before being used again by other members of the house.

7.—After complete recovery, the patient should be given at least one bath in hot water with a disinfecting solution (attending particularly to the hair), and should be given a complete change of clothing before leaving the sick room and associating with others.

8.—Nothing shall be removed from the sick room without first having been disinfected.

9.—Let there be no sweeping or dusting in the room, dust and dirt must be removed by damp cloths, which must afterwards be burnt or thoroughly disinfected.

10.—These measures of isolation and disinfection should be strictly put in force during the whole course of the disease. The sick room, or better still, the whole house must be properly disinfected under the superintendence of the Health Officer or Medical Health Officer. If death

Boards of Health.

occurs, the body must be immediately enveloped in a sheet soaked in disinfecting solution.

11.—Upon notification of recovery from the Medical attendant, or in the event of death, immediate report must be sent to the Board of Health.

12.—After recovery from the disease no one should sleep with the patient for several weeks, special care should be taken against kissing and fondling a person recently recovered from infectious disease, as the danger from contagion lingers a long time about the person.

13.—It cannot be too strongly impressed on Parents and Guardians the necessity of keeping their children from unnecessary exposure to damp and cold, especially wet feet, over fatigue and undue irregularity in regard to meals should be avoided, as these predispose the system to take disease.

Disinfecting Solutions.

For Clothing, Vessels, &c. ;—

Or, {	Corrosive Sublimate.....	1	Ounce
	Permanganate of Potash.....	1	Ounce
	Water	4	Gallons.
	Wyeth's Tablets (Corrosive Sublimate).....	2	
	Water	1	Quart.

For the Person :

Or, {	Corrosive Sublimate.....	1	Ounce.
	Permanganate of Potash.....	1	Ounce.
	Water	4	Gallons.
	Wyeth's Tablets (Corrosive Sublimate).....	1	
	Water	1	Quart.

RULES

For Disinfecting and Cleansing Infected Places.

1.—Special attention must be directed to the sick room and adjoining rooms, as follows:

- (a) Every aperture, hole, joint, &c., must be perfectly closed. (It must be borne in mind that sulphurous acid gas—vapor of burning sulphur—when breathed in large quantities, is destructive to life.)
- (b) All beds and pillows must be freely opened, and suspended to allow the sulphur fumes to penetrate.
- (c) In cases of small-pox, cholera, typhus, and scarlet fever, the beds and pillows should be burned or subjected to a dry heat of 250 deg. F., in a disinfecting oven.
- (d) All boxes, drawers, cupboards, mattresses, &c., must be opened, and their contents distributed about the room.
- (e) Clothing of all descriptions found in the room must be hung on lines stretched across the room.
- (f) Books, papers, &c., must be opened out and,

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Boards of Health.

as well as all else in the room, exposed, to the sulphur fumes.

- (g) Clear spaces must be left in the room in which to place the sulphur pans, and every precaution taken against fire from the burning sulphur.
- (h) Place the sulphur, either in powder or in small fragments, in an open pan, which should be placed upon a couple of bricks in a tub or pan partly filled with water. Moisten the sulphur with alcohol, to insure ignition. Several twisted pieces of paper embedded in the sulphur projecting above the surface and ignited at their ends will answer the same purpose. The quantity of sulphur to be used should be in the proportion of about 3 lbs. for a room ten feet square.
- (i) Everything being ready, set fire to the sulphur, and leave it so for twelve hours, watching the burning of the sulphur either through a window or by occasionally opening the door.
- (j) When the twelve hours are up, open all doors and windows, allowing them to remain open for the space of twelve hours, if weather permits. It is further desirable, when practicable, to wash all exposed surfaces, such as

Boards of Health.

doors, boxes, &c., with a solution of corrosive sublimate, 1 to 2,000.

- (k) Next place the bed-linen and clothing used by the patient in a tub containing corrosive sublimate solution, 1 to 1,000. Allow the clothes to soak in the solution for at least three hours, then wash in boiling water and hang in the open air.

2.—Other rooms in the house which have been subject to infection should be treated as the sick room, except, perhaps, as to soaking and washing.

3.—All articles used by the patient, such as cups, plates, knives, forks, spoons, &c., must be thoroughly disinfected and cleansed.

4.—All other rooms in the house, which might possibly contain infection, may be fumigated without disturbing their contents.

Length of Different Periods in the History of Infectious Diseases, by Dr. Vatcher, Birkenhead.

DISEASES.	Time from inception to beginning of Eruption	Time from final precursory symptoms to beginning of Eruption.	Time from beginning of Eruption to cessation of pyrexia.	Time from beginning of Eruption till Patient ceases to be infective.
Small-pox...	13 days. Range 7 to 21 days	2 days. Range a few hours to 7 days.	14 days.	56 days.
Varioloid or Modified Small-pox.	13 days. Range 7 to 21 days.	2 days. Range a few hours to 7 days.	14 days.	35 days.
Chicken-pox.	13 days. Range 4 to 17 days.	2 days. Range a few hours to 3 days.	5 days. Range 3 to 7	17 days.
Measles.....	14 days. Range 7 to 21 days.	4 days. Range 1 to 9 days	6 days.	27 days.
German Measles.	14 days. Range 10 to 20 days.	1 day. Range nil to 3 days	7 days.	14 days.
Scarlatina or Scarlet Fever	4 days. Range a few hours to 14 days	1 day.	7 days.	49 days.
Diphtheria..	5 days. Range 1 to 14 days.	2 days Range a few hours to 4 days.	14 days.	28 days.
Idiopathic Erysipelas	5 days. Range 2 to 14 days.	1 day.	14 days.	35 days.
Typhus Fever	14 days Range a few hours to 25 days	7 days. Range 3 to 7 days.	7 days.	21 days.
Typhoid or Enteric Fever	21 days. Range 1 to 28 days.	7 days. Range 7 to 12 days.	21 days. Range 14 to 23.	28 days.
Mumps.	18 days. Range 3 to 25 days.	4 days.	7 days.	21 days.

In Scarlet Fever the common period of incubation is from 24 to 28

**ory of Infec-
enhead.**

n Time from be-
beginning of
n Eruption till
n Patient ceases
to be infective.

50 days.

35 days.

17 days.

27 days.

14 days.

49 days.

28 days.

35 days.

21 days.

28 days.

21 days.

from 24 to 28

Boards of Health.

DIPHTHERIA.

Diphtheria may be met with anywhere; but it is a matter of experience that it exists, often in a most malignant form, in houses badly kept; in those in which fresh air and sunshine do not have free access; in those with damp cellars and defective drainage. Diphtheria also prevails in localities where the water supply is unwholesome.

Everyone Can Help.

The recent epidemic of diphtheria makes it desirable that some plain facts about the disease, and the way it spreads, should be generally known and understood. The only way of fighting it with success is to destroy its breeding-places and prevent personal infection. Here I may say that parents and guardians can use their influence and pre-

hours—occasionally longer, lasting from three to five days. In rare instances the incubatory period is practically absent, the symptoms following quickly upon exposure to infection. Any susceptible person who has been exposed to infection should, before being pronounced safe from its probable consequences, be kept under surveillance for a week, and then only be set at liberty after change of clothes and baths. It is an error to regard the infective process at an end before the cessation of desquamation and for some considerable interval thereafter. The tendency to albuminuria ought always to be remembered and guarded against. The isolation of Scarlet Fever patients for a period of not less than eight weeks is regarded as absolutely necessary by some prominent physicians.

vent the child mixing with the other members of the household and the public generally. This has been too much neglected; and time upon time have we heard of parents allowing their children to attend school, public gatherings, etc., when their brother and sister is home sick with, perhaps, sore throat. This should not be when such an epidemic is amongst us. Upon the appearance of any illness, especially sore throat, the greatest care should be exercised, isolation carried out to the letter. Then, again, parents endeavor to do so in some cases, but not early enough, often;—for by the time this is done, others have contracted the disease. Then the remainder of the household are sent off to a friend's house and, later, we hear of some two or three cases there; this house is then infected, and so on. I could name scores of such cases;—all because the first child's illness was not attended to earlier.

Diphtheria is an Infectious Disease.

It is a well-established fact that diphtheria is catching, that is to say, a patient suffering from it can communicate disease to another person, either by contact with the emanations or discharges of the patient or by the inhalation of infected air, or by the drinking of fluids contaminated by their discharges.

The infection can be carried about from one place to another in articles of clothing, or of food (milk more especially), or by anything which has been exposed to contagion in the sick room.

Boards of Health.

Children under the age of ten are the most likely to catch the disease, and it is amongst them that it is most dangerous. Grown up persons are liable to attack. No one can afford to neglect the preventative measures which science and experience have taught.

Preventive Measures.

1.—Everyone who is suffering from a cold or subject to sore throat, should take particular care that all his surroundings are in a thoroughly sanitary condition.

2.—There should be perfect ventilation, and the utmost cleanliness in the rooms in which children sleep, as well as in the schools and colleges which they may be attending.

3.—No case of sore throat, no matter how trivial it may appear, should be neglected. The family doctor should see the patient at once and give an opinion as to the nature of the disease.

4.—The breath of persons suffering from sore throat of any kind is likely to be a source of danger if inhaled by healthy persons. The kissing of such patients is highly dangerous.

5.—A child should never be allowed to come in contact, direct or indirect, with a patient suffering from diphtheria.

Accumulations of Filth.

6.—It behoves every householder to guard against all accumulations of dirt within or near his house; against any

Boards of Health.

possible contamination of his food or drink; against all foul smell, from whatever cause; and against impurity of air in the surroundings. No refuse must be allowed to lie in the yard or elsewhere. The refuse-barrel must be properly covered so as to keep the contents dry, and must be regularly cleared out every second or third day. All animal and vegetable refuse should be burnt in the kitchen fire whenever practicable. In the country, the manure heap should be as far from the residence as possible. The cellars should be kept scrupulously clean and dry, and frequently limewashed.

Sinks and Drains.

7.—The waste water pipe should be trapped close to the sink. The sink should be well flushed with clean water at least once or twice a day. All gutters, gulleys and drains should be kept clean and clear, and well sluiced down daily with water.

The water-closet must have a plentiful supply of water, and be kept scrupulously clean. It must be well flushed after each time of using.

Privy pipes are unnecessary anywhere, because they contaminate the soil. The dry earth closet on the drawer principle should be used. This latter system is more healthy when the water-closet cannot be introduced. Where an earth closet is in use, the contents should be removed as often as possible, and the drawers thoroughly washed out with one of the disinfectants.

Boards of Health.

It is of the utmost consequence to avoid all foul smells as from closets, sinks, drains and the like. It should be remembered that closets, sinks and drains, if not properly constructed and kept clean, will allow foul air to come up by the same channel by which water goes down. If, therefore, you are in doubt, or if the sinks or drains are in want of water or allow any smell to come up, go to the Board of Health or the Health Officer and ask him to see it, and to advise you on the matter.

Symptoms.

The child is usually suffering from a cold; has had wet feet, or been subjected to exposure, etc.; has no appetite; feels generally ill; neck and throat tender; is cold and shivery; head aches; ear aches; tooth aches; often vomiting; pain in the back; drowsy; voice altered. Soon complains of sore throat. Now you may feel certain that the child has diphtheria—especially if there has been a possibility of personal infection or there is an epidemic of such. Immediately isolate the sick one and send for a doctor.

The appearance of a creamy-looking membrane on the throat generally places the case beyond doubt. When such is present, you have left the case too long without attendance, and, more than likely, others have contracted the disease.

NOTES.

Boards of Health should have distributed in every house copies of the instructions to householders and private

Standard Weight.

individuals contained in this pamphlet, or others of a similar nature, and should see that the instructions are carried out.

When any of the more virulent infectious diseases, such as small pox or cholera, prevails in a populous district, reception buildings should be established for persons not actually attacked with such disease, but who require to be kept under observation lest they should become fresh centres for spreading it. Such persons should there be provided with clean clothing, allowed to prosecute their daily avocations, and kept under observation fourteen days.

HEMPSEED.—Standard weight of bushel, 44 lbs.

HERRINGS.—Fresh herrings when bought or sold by the barrel, every such barrel must contain 32 gallons water or struck measure. Every barrel used as a measure must be inspected and stamped by an Inspector of Weights and measures. Penalty not exceeding \$20 or in default of payment 14 days imprisonment.

Highways, Roads, Streets, Public Wharf, Public Beach or Breakwater.

INJURIES TO.—Any person who shall at any time excavate, dig up, remove, or carry away any portion of any

Husband and Wife.

road, street, highway, public wharf, public beach, or break-water, in St. John's, within the town or city limits, as defined by the Act 51 Vic., Cap. 5, without the consent of the Chairman of the Municipal Council and outside such limits in the several divisions of the district of St. John's without the consent of the Chairman of the Board of Works; and in the other districts, without the consent of the chairman of the respective road boards, shall forfeit and pay a fine not exceeding twenty dollars for each offence, to be recovered in a summary manner before any Stipendiary Magistrate or Justice of the Peace, and by the distress and sale of the offender's goods and chattels, and in default of any sufficient distress being found, such offender shall be imprisoned for any time not exceeding fourteen days.

HUSBAND AND WIFE.—The law on this subject still contains many absurdities and anomalies, but it has been much improved. Formally a husband had complete control over all his wife's property, when there were no trustees or marriage settlement; he could spend her money as he liked and will her estate to any other woman; this has all been changed. Formerly it was considered that as the husband was responsible for his wife's good behaviour, he could administer personal correction, beat her to a moderate degree, and use force to compel her to return to him, &c. A late case, which excited considerable interest, *Regina vs. Jackson*, decided that a wife cannot be kept confined or be compelled by force to return to her husband. Previous to the year 1883 a man could abandon his wife and return occasionally to plunder all her earnings gained in the interim. The Married Women Protection Act now provides "That every

Husband and Wife.

woman whose marriage took place after 1883 is entitled to hold and dispose of all property of every description which belonged to her at marriage or which she afterwards acquired, and all her wages, &c., earned in any business carried on separately from her husband. A wife deserted by her husband may apply to a Judge of the Supreme Court and obtain an order to protect any property she has acquired or may acquire. If the Judge is satisfied that the wife was deserted without reasonable cause, and that the wife is maintaining herself by her own industry, he may make an order that will protect her as if she were a single woman. Such order to be effective must be registered. (The subject of the protection of deserted wives and children will be found p. 169.) The further extension of protection to the wife which is now in force in England under the "Matrimonial Clauses Act, 1878" (41 Vic., Cap. 19) has not yet been extended to this Colony. For poor women the provisions of this Act are far more valuable and made easier of application than the Married Women's Protection Act. This new law provides that "If a husband be convicted summarily or otherwise of an aggravated assault on his wife, the Court or Magistrate before whom he is convicted may if satisfied that the future safety of the wife is in peril, order that she shall no longer be bound to cohabit with her husband, and such order shall have the force and effect in all respects of a decree of judicial separation, and such order may further provide, for payment by the husband of the wife's maintenance and the custody of her children, &c.

The liability of husband and wife in criminal cases

Husband and Wife.

will be found in the first part of Enquiries in Indictable Offences.

In certain criminal cases if the wife is in company with the husband in the commission of the offence, she is considered to act under the coercion of her lord and master. This presumption is however rebutted where it can be proved that she took a principal part in the commission of the offence. In felonies and misdemeanours a wife cannot be convicted of any larceny, burglary, forgery or for uttering forged notes, if the offence were committed in the presence of her husband and with his coercion and participation. But in treason, murder, homicide, perjury and in misdemeanours generally the presence and coercion of her husband will not protect the wife. In summary convictions husband and wife may be jointly convicted and punished for every offence, and if jointly prosecuted the wife alone may be convicted. If neither she nor her husband pay the penalty she must undergo the imprisonment awarded; the penalty cannot be levied on her husband's goods except in license and other special cases. A wife may be prosecuted alone under summary jurisdiction for any offence of which she alone has been guilty. As a general rule a wife cannot be guilty of larceny of her husband's goods, but if she elopes with another man and he receives any of the husband's goods the adulterer may be convicted of stealing. If the goods taken be the wife's wearing apparel the charge will not be sustained. The absurdity of the law in presuming that a wife is always under the coercion of her husband, and its inconsistency, is well shewn by two examples. If husband and wife break their neighbor's nose or his windows they can be tried summarily and be jointly

Idiots and Imbeciles.

or severally convicted. If, however, they were to break into their neighbor's house in the night and steal money this would be burglary and the wife would be excused under the plea of coercion. If, however, they murdered the inmates the wife could be convicted and executed.

In all the foregoing examples the wife must be proved to be a lawful wife, otherwise she has no privilege or exemption.

Idiots and Imbeciles.

Any one who unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile is guilty of a misdemeanor. (Indict. offences. Bail discretionary. Imprisonment 2 years.) Idiots and lunatics see evidence. (See also under Indictable offences.)

ILLEGITIMATE CHILDREN—(See bastardy.)

Immigrants (Of Mendicant and Infirm Immigrants.)

1.—Any master of a vessel or other person who shall bring into and land in any place in Newfoundland, any person who, at the time of such landing, shall from sickness, age, infirmity, or want of means of support become

Indictable Offences.

chargeable to the Government, shall be subject to a penalty of one hundred dollars, to be recovered in a summary manner with costs before a Stipendiary Justice of the Peace, in an action to be brought in the name of and by the Stipendiary Commissioner of the Poor, and paid over to the Receiver General for the use of the colony; and no conviction under this chapter shall be removable by *Certiorari* or otherwise.

IMPRISONMENT—(See hard labor.)

INDIAN CORN—Fifty lbs. weight of standard bushel.

Indictable Offences.

- | | |
|---|---|
| 1—Division into Indictable offences and Summary Convictions.
2—Explanation of Indictable offences.
3—Form of Indictment.
4—Indictment may be preferred without previous investigation. | 5—Reasons why this rule is not followed.
6—Prevention of vexatious Indictments.
7—Perjury.
8—General observations. |
|---|---|

1. The two great divisions into which the work of a Justice of the Peace, in respect of crimes, are divided, are,—

Indictable Offences and

Summary Convictions.

2. Indictable offences here, mean all offences in which a Bill of Indictment must be presented to a Grand Jury,

Indictable Offences.

and a True Bill found by them before the prisoner can be put upon his trial.

3. An Indictment commences with heading *Supreme Court of Newfoundland, or Supreme Court on the Northern or Southern Circuit*, and in the left hand corner, *Newfoundland (place of trial) to wit.* This is called the venue or statement of the place where the crime was committed, or is tried. Next follows the accusation, in the words—*"The Jurors of our Lady the QUEEN, upon their oath, present, that [here state the offence]."* When the Foreman of the Grand Jury endorses on the Bill *"a True Bill; for self and fellow Jurors,———Foreman;"* The prisoner is then put upon his trial before another Jury, generally a Petty Jury, and if the Indictment is marked on the back *"Bill ignored,"* or *"no Bill,"* the prisoner is discharged, unless there is another Indictment or other charge against him. (a)

4. With the exception of the cases mentioned under the next section, *prevention of vexatious Indictments*, an Indictment may be preferred for the offence at the Court having jurisdiction to try it, without a previous investigation before Magistrates. (b)

5. Whilst this is the Rule of Law, there are many cogent reasons why this course should not be adopted, (and, as a matter of practice, Indictments are rarely so preferred); 1st, because the accused would not be in custody,

[a] For further information respecting proceedings before the Grand Jury, in indictable offences, and also of a trial before a Petty Jury, for same offence, see Oke's Magisterial Guide.

[b] Oke, p. 822.

Indictable Offences.

and might escape; 2nd, witnesses would not be bound over to give evidence; 3rd, there would be no depositions, and the accused would be unable to see what evidence is to be produced against him, a circumstance which has ever been deemed one of great hardship, and which would be the cause of drawing down strong animadversions from the Bench. (c)

6. PREVENTION OF VEXATIOUS INDICTMENTS.—For certain misdemeanors, hereafter enumerated, it is enacted by Acts 22 and 23 Vic., Cap. 17, and 30 and 31 Vic., Cap. 35, that no Bill of Indictment for any of the following offences:—(d)

Perjury,

Subornation of Perjury,

Conspiracy,

Obtaining money or other property by false pretences.

Keeping a Gambling House.

Keeping a Disorderly House,

Any Indecent Assault,

Offences under the Merchandize Marks Act,

All Libels (44 & 45 Vic., Cap. 60.)

Or Offences under the Criminal Law Amendment Act, 1885, shall be presented to or found

[c] Saunders, p. 157.

[d] The Criminal Code Commissioners in England reported year strongly against allowing any Indictments to be sent to the Grand Jury without a preliminary enquiry before Magistrates and it will probably cease to be the practice in the future.

Indictable Offences.

by a Grand Jury, unless the Prosecutor or other person presenting such Indictment has been bound by Recognizance to prosecute or give evidence against the accused, or the accused is in jail or has been bound by Recognizance to answer an Indictment, or an Indictment is presented by direction or with the consent, in writing, of a Judge of the Supreme Court, or by the Attorney or Solicitor General; or in case of Indictment for perjury, by direction of the person authorized by Statute to direct a prosecution for perjury (see *Post.*) By second Section, it is enacted, that where any charge or complaint shall be made before a Justice that any person has committed any of the foregoing offences, and such Justice shall refuse to commit or bail the person charged, then, in case the Prosecutor shall desire to prefer an Indictment, the Justice must take the Prosecutor's recognizance, and transmit it, with the information, deposition, &c., if any, to the Court where the Indictment ought to be preferred. Sec 1, of the 30 & 31 Vic., Cap. 35, amends the foregoing, so as to prevent it extending to the case of joining counts in an Indictment, with the consent of the Court, for any of the above-mentioned offences, founded on the facts disclosed in the deposition taken before Justices.

7. By the 14 & 15 Vic., Cap. 100, Sec. 19, "Justices in *Special* or *Petty* Sessions, may commit to the next assizes (which would correspond to our Supreme Court on Circuit or in St. John's) any person who shall appear to them to have

Indictable Offences

committed wilful and corrupt perjury (*e*) in any evidence given or proceeding taken before them, unless they enter into a recognizance, &c." As Justices here do not meet in Special or Petty Sessions, it is very doubtful whether this Section applies; and in all cases of prosecutions for perjury, there should be a regular preliminary investigation before Justices, and a committal in the ordinary way of dealing with Indictable offences.

8. I have thought it necessary, as this little work is principally intended for Justices of the Peace who have not had much experience about law, to give these very simple explanations about Indictments, but it will be obvious to any of my readers that before any of these proceedings can be taken, there must be some one to try, and, like Mrs. Glasse's celebrated directions about cooking a hare, "first catch your hare," so as regards criminal proceedings, you must first catch your prisoner, and it is the first and most important duty of the Magistrate, in all cases where a crime is committed, to *secure the offender*.

[*e*] *Perjury* is the wilfully false representation on *oath*, of some fact, material to the question at issue, made before some authority legally competent to administer it, and having jurisdiction in the matter. Subornation of perjury is procuring another to take such false oath. Both offences are misdemeanors. [See *Stone*, 388, 389. *Oke*, p. 84, *Perjury*.]

Perjury.—The offence must be proved by two witnesses, or by one witness, and other evidence in confirmation, as, for instance, a written document.

Indictable Offences.

ENQUIRIES BEFORE JUSTICES IN INDICTABLE OFFENCES.

I.—*Preferring the Charge.*

- 1.—Preliminary observations; importance and difficulty of Magistrate's duty in respect of.
- 2.—Law regulated by Jervis Act, &c.
- 3.—Arrangement of Sections.
- 4.—Limitation of time.
- 5.—Jurisdiction as to locality.
- 6.—The applications for process should be heard in private.
- 7.—The Offenders.
- 8.—Infants.
- 9.—Lunatics.
- 10.—Wife.
- 11.—Preamble to Jervis Act.
- 12.—Power to issue Warrant or Summons.
- 13.—Offences on the high seas or abroad.
- 14.—Justices for adjoining Counties, sections 5, 6 & 7 not applicable.
- 15.—Information.
- 16.—No objection allowed for defect in substance or form.
- 17.—Any person may lay the information.

II.—*The Process to Issue against Offenders.*

- 18.—Summons or Warrant.
- 19.—Service of Summons.
- 20.—Non appearance.
- 21.—Defect in form; objection not allowed.
- 22.—Form of Warrant.
- 23.—Backing Warrants.

24.—Apprehension where an Indictment found.

25.—Apprehension in one District for offence in another.

26.—Sundays -- Warrants issued and information taken on.

27.—Apprehension without Warrant.

28.—Search Warrant.

29.—How to obtain a Search Warrant.

30.—Mode of executing Search Warrant.

31.—Importance of obtaining Search Warrant, Forms of Information and Search Warrant.

III.—*Compelling the attendance of Witnesses.*

32.—Attendance of Witnesses by Summons.

33.—Warrant, when witness does not appear on Summons.

34.—Warrant in first instance.

35.—Refusing to be examined.

III.—*The Hearing and Examination of Prosecutor's Witnesses.*

36.—The Court—Place of examination.

37.—Examination of Witnesses for Prosecution.

38.—Witnesses unable to travel, &c.

39.—Examination for offence in another jurisdiction.

*Indictable Offences.**V.—Statement of Accused and Examination of his Witnesses.*

40.—Reading over Depositions in presence of Accused.

41.—Caution to Accused.

42.—What Accused says to be taken down.

43.—Second caution.

44.—Prosecutor not prevented giving evidence of admissions.

45.—Observations on 30 & 31 Vic., Cap. 35; application to Colony.

46.—Witnesses of Accused—examination of.

47.—Expenses of such Witnesses.

VI.—Binding over Prosecutor and Witnesses by Recognizances.

48.—Recognizance.

49.—Witnesses refusing to enter into Recognizance.

VII.—Remand.

50.—General Rules for demand—verbal, 3 days; in writing, 8 days.

51.—Prisoner may be released on bail during demand.

52.—Return, when Recognizance forfeited.

53.—Form of Return.

VIII.—Bail.

54.—Bail in Felony and other misdemeanors.

55.—Bail in other misdemeanors.

56.—Observations on bail; not taken in murder, &c.

57.—Taking bail; judicial duty

58.—General rule; object to secure Prisoner's presence at trial.

59.—Circumstances to be considered.

60.—Refusing bail; criminal offence.

61.—When Prisoner has right to bail, Justice not to dissuade bail.

62.—Two Sureties, generally.

63.—Ability of bail; how determined; questions.

64.—Amount of bail.

65.—Prisoner may apply to Supreme Court, when refused by Justice.

66.—Surrender of Accused by his bail.

67.—Liberate to Gaoler, on Prisoner's admission to bail.

IX.—Discharge or Committal of Prisoner for Trial.

68.—Prisoner when to be discharged.

69.—When Committed.

70.—Conveying Prisoner to jail

X.—Miscellaneous.

71.—Copies of Depositions.

72.—Forms in Schedule.

73.—Stipendiary Magistrates

74.—Deposition of person dangerously ill.

75.—Prisoner's presence.

76.—Money found on Prisoner.

77.—Removal of Prisoner without Habeas Corpus.

78.—Resume of the order of the various steps in an enquiry.

*Indictable Offences.**I.—PREFERRING THE CHARGE.*

1. The duties of Justices of the Peace, with respect to Indictable offences, are the most important and difficult duties Magistrates have to perform; and as all their proceedings have to come before the Supreme Court, and are liable to be reviewed by the Judges, Law Officers of the Crown, and prisoner's Counsel; Justices, for their own credit sake, should endeavor to perform these duties according to Law. And it is because of their importance that I have gone into every particular, and endeavored to give plain and clear directions about all that is necessary in ordinary cases.

2. The Law regulating proceedings before Justices, with respect to Indictable offences, is regulated principally by two Acts, 11 & 12 Vic., Cap. 42, known as Jervis's Act, and made part of the Law of this Colony, by Chapter 30, Consolidated Statutes, Sec. 4; and another Act, 30 and 31 Vic., Cap. 35, which is also undoubtedly part of our Criminal Law, as it is in *amendment*, and a *further enactment* on the same subject; it is therefore absolutely necessary that the Justices of the Peace in all such proceedings should follow strictly the directions contained in these Acts. I have, therefore, compiled, from English works, an analysis of all parts of the Acts which have any reference to this Colony.

3. For convenience, and to follow the order of this Act, this part of the Justice's work may be conveniently divided into the following heads:—

I.—Preferring the charge.

Indictable Offences.

II.—The Process to issue against offenders.

III.—Compelling the attendance of Witnesses.

IV.—The hearing and examination of Prosecutor's Witnesses.

V.—Statement of accused, and examination of his witnesses.

VI.—Binding over Prosecutor and Witnesses by Recognizances.

VII.—Remand.

VIII.—Bail.

IX.—Discharge or Committal of Prisoner for trial.

X.—Miscellaneous provisions of the Act not falling under either of those heads.

4. There is only one Indictable offence applicable to this Colony, in which the time for prosecution is limited, viz.: the Riot Act. 1 Geo. 1st, 2 c. 5, s. 8. Prosecutions must be commenced within twelve calendar months.

5. As to the place where the offence was committed, The Justice's jurisdiction. (See Justices of the Peace.)

6. APPLICATIONS SHOULD BE HEARD PRIVATELY.—It is recommended that all applications for a Summons or Warrant against any person for an offence or cause of complaint, should not be permitted

Indictable Offences.

to be made in open Court; and where the application is for an indictable offence, the information in writing and on oath should be required from the Prosecutor and his witnesses. The reasons for this course are, that persons sometimes, from malicious or revengeful feelings, or for some private object, go before the Magistrates to make complaints, in order to have them published to the world, and without any intention of proceeding further with them. This plan is also strictly in accordance with law.

7. THE OFFENDERS.—The general rule is that all persons are responsible for their acts done in violation of the law; but to this rule there are exceptions in favor of infants, insane persons, persons under coercion, as married women and others; in some cases also the accused, although interested in the property in respect to which the offence was committed, (as in the case of a man setting fire to his own house), is liable to be convicted.

8.—An *infant* under seven years of age is not criminally responsible, the law considering the mental capacity of a child of such tender years to be too immature to enable it to form a sufficient judgment of right and wrong; but above seven and under fourteen they are criminally responsible for their acts, if it appear they had sufficient discretion. (a)

9. LUNATICS.—In the case of a lunatic, the Law presumes the offence to have been committed in a lucid inter-

(a) For exceptions to this rule, see *R. v. Phillips*, 8 C. & P. 736; and *R. v. Jordan*, 9 C. & P., 118, where an infant may be found guilty of a felonious assault. Under the summary jurisdiction in larceny, (*Post*) persons under and above sixteen may be punished summarily for simple larceny and other felonies.

Indictable Offences.

val, unless it appears to have been committed in the time of his distemper; and where persons supposed to be lunatics are charged before a Justice with an indictable offence, the course to take is to secure their appearance at the trial, in order that, if they are insane, they may be confined in the Asylum and taken care of.

10. WIFE.—See *ante* Husband and Wife p. 375.

11. Jervis Act, 11 & 12 Victoria, Cap. 42, "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions, within England and Wales, with respect to persons charged with indictable offences." The Preamble sets forth "that it would conduce much to the improvement of the administration of criminal justice if the several Statutes relating to the duties of Justices of the Peace, with respect to indictable offences, were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by positive enactment."

12. POWER TO ISSUE WARRANT OR SUMMONS.—It is provided in Section I., that,—In all cases where a *charge* (a) or complaint (A) shall be made before a Justice that any person has committed or is suspected to have committed any treason, felony, or indictable misdemeanor, or other

NOTE.—Under some of our Local Acts, such as the License Act, 1875. Sec. 36, and also Game Act, Cap. 116, Consol. Stat., Sec. 12, married women are liable, as unmarried women or principals.

(a) CHARGE.—The most approved course under this Act, in all cases, is to take an information in *writing* and *on oath*, whatever process is issued against the accused. [See *Oke*, p. 839.]

The letters A, B, C, refer to the forms under this Act, in the Appendix of Forms; some of the forms will be found in Chapter 9.

Indictable Offences.

indictable offence whatsoever, within the limits of such Justices, or has committed or is suspected to have committed any such crime or offence out of the Justice's jurisdiction, and the said accused or suspected person is residing or is suspected to reside within the jurisdiction of the Justice, the Justice may issue his *Warrant* (B) to apprehend or may issue a *Summons* (C) in the first instance, directed to such person, requiring him to attend, and in case he shall fail to appear, in obedience to the *Summons*, the Justice may issue his *Warrant*: (a) Provided that nothing herein contained shall prevent the Justice from issuing the *Warrant* at any time *before* or *after* the time mentioned in the *Summons* for the appearance of the accused. [Sec. 1.]

13. OFFENCES ON THE HIGH SEAS OR ABROAD.—In all cases of indictable offences, committed on the High Seas, or in any harbour or place where the Admiralty of England have jurisdiction, (*or on land beyond the Seas, for which an indictment may be preferred in England,*) (b) any Justice of any District in which any person charged with or sus-

Warrant.—No *Warrant* can be issued to apprehend an offender, except on an information, in writing, and on oath made before a Justice.

Summons.—May issue without information in writing and on oath, but for the Justice's own protection, and in order to prevent needless litigation and the trial of frivolous complaints, the Justice should, in all indictable offences, require the party laying the information to substantiate it on oath. Experience in the Police Office, in St. John's, has taught us the expediency of this Rule, which should always be followed.

(a) A case might arise where, after issuing the *Summons*, the Justice found that the accused would not appear and might be trying to escape, the course then to adopt would be to take a written information on oath, and to apprehend the accused at once, even before the time mentioned for the accused's appearance under the *Summons*, had expired. This Section under the words *before, &c.*, giving this power.

(b) It is doubtful whether this part of the Section, in italics, applies. See Imperial Act, 12 & 13 Vic., Cap. 96, as to Admiralty jurisdiction, and Archibald, *Crim. Pleading*, p. 31 to 33.

Indictable Offences.

pected to have committed any such offence shall reside or be, may issue a Warrant (E) to apprehend such person, and to cause him to be brought before him or some other Justice to answer the charge. [Sec. 2.]

14. JUSTICES FOR ADJOINING COUNTIES, &c., may act as such for one County, whilst residing in another. Here it would be District. (Sec. 5.) This Section and the two following Sections 6 and 7, refer to the County jurisdiction in England, and have no reference to this Colony.

15. INFORMATION.—In all cases of charges for indictable offences, where any Justice intends to issue a Warrant in the first instance, an information and complaint, in writing, must be made on the *oath or affirmation* (a) of the informant or of some witness; but where it is intended to issue a Summons in the first instance, the information and complaint need not be in writing or on oath, but by parole only. [Sec. 8.]

16. NO OBJECTION shall be allowed to any such information or complaint, for any alleged defect in substance or form, or for any variance between the information and the evidence. (b) (Sec. 8.)

17. ANY PERSON MAY LAY THE INFORMATION for an in-

(a) *Affirmation*, see Evidence.

(b) An objection may be made if the evidence prove a *different* from that stated in the Summons or Warrant, this not being a mere variance. [*Martin v. Pridgeon*, 28 L. J. 179; and *R. v. Brickhall*, 33 L. J. 156.] *Stone*, p. 4.

The information is merely for the guidance of the Justice in issuing his Warrant, and is in fact no portion of the proceedings so far as the Defendant is concerned in his defence; any objection to the form or substance of the information is absolutely prohibited by the proviso. [*Glen*, p. 16.]

Indictable Offences.

dictable offence; the most usual course is to take the information in the form of a deposition, stating shortly the facts, and not an information of the offence, couched in the technical and formal language necessary in an indictment or commitment. [*Glen*, p. 16.] The reason of this is, because it is a preliminary proceeding when, however the accused is brought before the Justice for the examination of witnesses, the charge against him must be stated with precision, and it should be read as recommended from the caption to the depositions.

II. —The Process to Issue Against Offenders.

18. SUMMONS OR WARRANT.—Upon such information and complaint [A] being laid, the Justice receiving the same may issue a Summons or Warrant [B] to cause the person to appear before him, or some other Justice; and every such Summons [C] shall be directed to the party charged, and shall state, shortly, the matter of the information, and require the party to whom it is directed to appear at a time and place therein mentioned before the Justice issuing the Summons, or before some other Justice or Justices.

19. SERVICE OF SUMMONS.—Every such Summons shall be served by a Constable, or other Peace Officer, on the person to whom it is directed, either personally, or if he cannot conveniently be met with, then by leaving the same with some person for him at his last or most usual place of abode; (a) and the Constable or Peace Officer serving the

[a] The Summons should be left with some one likely to give it to the accused; it should, therefore, be left with his wife, servant or parent, and not with anyone who will be indifferent about giving it to him.

Indictable Offences.

same, shall attend at the time and place mentioned in the Summons, to depose, if necessary, to the service thereof.

20. NON-APPEARANCE.—If the party summoned do not appear according to the Summons, a Warrant (D) may be issued to apprehend and bring him before any Justice (b) to answer the charge.

21. DEFECT IN FORM.—No objection shall be allowed to any Summons or Warrant for any alleged defect therein, in substance or in form, or for any variance (c) between it and the evidence; but if the variance appear to such Justice to be such that the party charged has been deceived or misled, he may, at the request of the party charged, adjourn the hearing of the case to some future day, and in the meantime remand the party charged, or admit him to bail. (Sec. 9.)

22. FORM OF WARRANT.—Every such Warrant (E) shall be under the hand and seal of the Justice issuing the same, and may be directed either to any Constable or other person by name, or generally to the Constable of the District over which the Justice has jurisdiction, and shall

[b] Where the Justice is only Justice of the Peace for one of the three districts, his Warrant must only be directed to the constables of that district only. Where the Justice is a Justice for the Colony, after the words, "to the Constables of the ——— District" may be added, "and to any other Constables of the Colony." The word *Colony* would include Labrador and every other place under the Colonial Government of Newfoundland. The words "*Island of Newfoundland*," without adding "*and its Dependencies*," might not be held to include Labrador.

[c] If the evidence prove a *different offence* from that stated in the Summons or Warrant, this is not a *mere variance*; when this is the case a fresh information and a fresh Warrant should be issued as soon as possible.

Indictable Offences.

state, shortly, the offence, and shall name or otherwise describe the offender; and it shall order the person to whom it is directed, to apprehend the offender and bring him before the Justice issuing the Warrant, or some other Justice to answer the charge; and it shall not be necessary to make such Warrant returnable at any particular time, but it may remain in force *until it is executed*. (a) [Sec. 10.]

23. BACKING WARRANTS.—If the person against whom any such Warrant has been issued be not found within the jurisdiction of the Justice by whom it is issued, or if he shall escape, go into, reside, or be, or be supposed or suspected to be, in any place (within the Colony) out of the jurisdiction of the Justice issuing the Warrant, any Justice of the District into which such person shall escape, or be suspected to be as aforesaid, upon proof alone on oath of the handwriting of the Justice issuing the Warrant, may make an indorsement (K) on it, signed with his name, authorizing the execution of the Warrant within his jurisdiction, and such indorsement shall be a sufficient authority to the person bringing the Warrant, and to all other persons to whom it was originally directed, and to all Constables of the District where the indorsement is made, to execute the same in such other District, and to carry the offender, when apprehended, before the Justice who first issued the Warrant, or some other Justice for the

[a] When executed, the Constable cannot discharge himself of the offender, otherwise than by taking him before a Justice of the Peace. The Warrant to apprehend has been held to remain in force during the lifetime of the Magistrate who granted it; and may be acted upon even after the death of the Magistrate who signed it, 34 J. P., 509. A warrant for an indictable offence only may be executed on Sunday, but no ordinary warrant can be issued or executed on that day unless in the matter of a breach or apprehended breach of the peace.

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same District, or before some Justice of the place where the offence appears by the Warrant to have been committed; but if the prosecutor, or any of the witnesses for the prosecution, shall then be in the place where the person shall have been so apprehended, he may be taken, *if so directed* by the Justice backing the Warrant, before him or some other Justice having the same jurisdiction, who may take the examination of the prosecutor or witnesses, and proceed in manner hereinafter directed, &c. (Sec. 11.) Sections 12, 13, 14 & 15, refer to the Backing of Warrants in Jersey, &c., not applicable. (a)

FORM (K.)

Warrant (Backing a.)

NORTHERN DISTRICT, }
Island Cove }
to wit.

NEWFOUNDLAND.
WHEREAS proof upon oath hath this day been made before me, one of Her Majesty's Justices of the Peace in and for the said [District] that the name of J. S. to the within Warrant subscribed is of the handwriting of the Justice of the Peace within mentioned: I do, therefore, hereby authorize W. T., who bringeth to me this Warrant, and all other persons to whom this Warrant was originally directed, and also all Constables of the said [District] to execute the same within the said last-mentioned [District] (b)* and to bring the said A. B., if apprehended

[a] The directions as to backing Warrants given in this Section, [Sec. 11 of the Act], are clear and well defined. The Justice who issues the Warrant should always send full particulars about the case, the witnesses' residence, &c., to the Justice who is to back, so as to guide him as to the course he is to pursue, with respect to the prisoner. Generally, in St. John's, the Magistrates back the Warrant to have the prisoner brought before them, whether there are or are not witnesses to be examined in St. John's, as it is not always possible to send him back to the Justice issuing the Warrant at once; in such case, the prisoner is remanded from time to time, until the opportunity offers for sending him on. Of course whatever evidence can be procured is taken, and he is forwarded to the Justice who issued the Warrant, without any unnecessary delay.

[b] The words following this asterisk are to be used only where the Justice backing the Warrant shall think fit, and may be used in such cases as before referred to, in St. John's, or where the witnesses were in the District of the Justice who backs the Warrant, and before whom the case could, with the greatest convenience to all parties, be dealt with. When the witnesses are in the District of the Justice who issued

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within the same [District] before me, or before some other Justice or Justices of the Peace of the same [District], to be dealt with according to law.

Given under my hand, this — day of —, 18—.

J. L.

24. APPREHENSION WHERE AN INDICTMENT IS FOUND.—

Upon production to the Justice of a certificate [F] from one of the Chief Clerks of the Supreme Court, either in St. Joan's or on Circuit, or from a Clerk of the Peace, that an indictment has been found against a person, being either within the Justice's jurisdiction or suspected to be so, the Justice must issue his Warrant (G) to cause him to be brought before him or some other Justice, and upon proof (which, of course, must be on oath,) that the person apprehended is the same person named in the indictment, the Justice shall, without further enquiry, commit (H) the prisoner for trial, or admit him to bail; and if the person so indicted be already in prison for some other offence, such Justice is required upon proof on oath that the person indicted and the person in prison are one and the same person, to issue a Warrant (I) to the keeper of the prison, commanding him to be detained until he shall be removed by *Habeas Corpus* or otherwise. (Sec. 3.)

25. APPREHENSION IN ONE DISTRICT FOR OFFENCE IN ANOTHER.—Whenever a person shall be brought before a

the Warrant, and the prisoner can be brought on at once, the words following the asterisk are omitted, and the prisoner, when arrested, is brought at once back before the Justice who issued the Warrant. The latter course, however, is not usual, and would not be found convenient. See note to Sec. 6, Cap. 3, p. 13; and, also, Sec. 22 of this Act, with respect to the duties of the Justice backing Warrant, when the backing directs the prisoner to be brought before him as in the above form after the asterisk.

Sec. 3.—In practice, this Section will not often be put in operation. The usual course, when an Indictment is found, is to issue a *Bench Warrant* from the Supreme Court; this applies over the whole Colony.

Indictable Offences.

Justice charged with an offence alleged to have been committed in any place wherein such Justice shall not have jurisdiction, he shall examine such witnesses, and receive such evidence in proof of the charge as shall be produced before him within his jurisdiction and if, in his opinion, the evidence shall be sufficient proof of the charge, he shall commit the accused to the gaol or the place where the offence is alleged to have been committed, or admit him to bail, and shall bind over the prosecutor (if he have appeared before him) and the witnesses by recognizance. If the evidence shall not be deemed sufficient to put the accused party upon his trial, the Justice shall bind over the witnesses to give evidence, and shall by warrant order the accused to be taken before some Justice of the District or place where the offence is alleged to have been committed, and at the same time deliver the information and complaint, and the depositions and recognizances to the Constable who has the execution of the last-mentioned warrant, to be by him delivered to the Justice before whom he shall take the accused in obedience to such warrant, and which depositions and recognizances shall be treated as if they had been taken before the last-mentioned Justice; and the Constable or other person who shall have conveyed such accused party under the warrant shall be entitled to be paid his costs of conveying him before such Justice. On producing the accused before such Justice and delivering to him the warrant, information, (if any), depositions, and recognizances aforesaid, and proving by oath the handwriting of the Justice subscribing the same, the Justice before whom the accused shall be produced shall forthwith ascertain the sum which ought to be paid to such Constable or other person for conveying the

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Indictable Offences.

accused, and also his reasonable expenses of returning, and shall thereupon make an order for payment thereof; and if such last-mentioned Justice shall not think the evidence sufficient to put the accused on his trial, and shall discharge him without holding him to bail, the recognizance taken by the first-mentioned Justice shall be void. [*Id.* s. 22.]

26. SUNDAYS.—Justices may take information and grant or issue any Warrant or any Search Warrant for an *indictable* offence, on Sunday as well as on any other day. (Sec. 4.)

27. APPREHENSION WITHOUT A WARRANT.—Any person who is present when a felony is committed, may at once apprehend the party, and take him before a Magistrate to be dealt with according to Law; in case of a *private individual*, however, it is his duty, if no Justice can at once be found, to hand the offender over to a Constable. [3 *Hawk*, 156.] But when the offence is not committed in the *presence* of the party, this distinction exists between the powers of a Constable and a private individual. A Constable may not only apprehend a person against whom a reasonable charge of felony is made by another person, although it may afterwards turn out that no felony has, in

NOTE.—This Section does not in words authorize the *execution* of a Warrant on Sunday, but it has been held that the 29 Car. 2, Cap. 7, Sec. 6, authorizes the arrest, on Sunday, of all persons who have been guilty of indictable offences; therefore, a person guilty of an indictable offence, may be apprehended on Sunday, whether such offence involves an actual or only a constructive breach of the peace. [*Rawlins v. Ellis*, 16 L. J. (N. S.) *Exch.* v. 16 M. & W. 172.]

NOTE.—The arrest of persons under Malicious Injuries' Acts, Local and Imperial, and under Local Telegraph Protection Act, and Imperial Coinage Act, are referred to in Chapter on Summary Convictions.

Indictable Offences.

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fact, been committed, but he may apprehend person upon his own suspicion alone, of having committed a felony, though in the result it appear that no crime has been committed, but he should act with becoming caution, and on a reasonable ground of suspicion; and if, after the apprehension, the Constable is guilty of any unnecessary delay in taking the party before a Justice, or is guilty of any excess or abuse of power, he will still be liable to an action. But with regard to the arrest by private persons, without a Warrant, although they are bound to capture, if possible a party committing a felony in their presence, [2 *Hawk*, c. 12, s. 1,] yet, if a man choose to apprehend another without a Warrant, upon *suspicion* alone, of felony, he will do so at his peril, for should no felony in point of fact have been committed, an action will lie against him for false imprisonment. A *suspicion* alone is not enough to justify a private person in making an arrest, and where the party be not detected in the actual commission of the offence, and there is no fear of his absconding before a Warrant can be obtained, the proper course is to get a Warrant. (*a*)

28. SEARCH WARRANT.—It not unfrequently occurs that without any direct proof of guilt existing against a party, there is, nevertheless, evidence of his possession of stolen goods, which the owner is in a condition to identify. In such a case, criminal proceedings are often initiated by an application to a Justice for a *Search Warrant*, which being granted, the suspected premises are searched by a Constable, when, should the goods be discovered, they are

[*a*] *Saunders*, pp. 159 & 160.

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taken possession of, and the occupier of the premises whereon they are found is himself apprehended, and brought before the Magistrate to answer the charge, either of having stolen, or received them, knowing them to have been stolen.

29. HOW TO OBTAIN A SEARCH WARRANT. — When, therefore, a party whose goods have been stolen, has reasonable grounds for suspecting that they are upon the premises of some particular person, he should go before a Justice having jurisdiction in the District where the premises are situated, and make oath, by himself or his witnesses, of the facts on which he founds his application; and upon satisfying the Justice either that the goods were stolen, or that there is reason to suspect they are stolen, and that there is also reason to believe they are upon the premises indicated, he will grant his Warrant, not only to search the premises, and seize the goods, but to *apprehend the party in whose possession they may be found.* (a)

(a). There are cases where a Search Warrant may be issued, and the articles found under it, and yet the party in whose possession they are found be guilty of no offence. For instance a forged instrument may be in the possession of a party who neither forged it nor intends to utter it; or goods may have been left in the house by the thief, without the knowledge of the owner of the house. In such case there can be no lawful authority to apprehend, and therefore the Search Warrant ought not to direct the Constable to apprehend the person in whose possession the articles mentioned in the Warrant may be found. In every case, therefore, where a Search Warrant is applied for, the Justice should be satisfied that if the articles are found in the possession of the person suspected to have them, there is reasonable cause to believe that he has been guilty of some offence in connection with the stolen goods, either as receiver or thief before he grants a Search Warrant authorizing his apprehension; and in case of doubt, it will be much wiser to leave out the authority to arrest. If the articles be found, and the facts warrant it, an ordinary Warrant for the apprehension of the party in whose possession they were found may be afterwards issued and the case dealt with in the ordinary course. [*Greaves, p. 401.*]

Indictable Offences.

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Under the Larceny Consolidation Acts, (24 & 25 Vic., Cap. 96, Sec. 103), it is enacted, "that if any credible witness shall prove upon oath, before a Justice of the Peace, a reasonable cause to suspect that any person has in his possession, or on his premises, any property whatsoever, on or with respect to which any offence, punishable either upon indictment or upon summary conviction by that Act, shall have been committed, the Justice may grant a Warrant to search for such property as in the case of stolen goods."

30. MODE OF EXECUTING SEARCH WARRANT.—Great caution should be observed in executing this Warrant; the Constable to whom it is directed will be the party intrusted with it, but he should be accompanied to the premises by the owner of the property or some other person who is enabled to point out and swear to the goods in question. If the premises are closed, and the Constable is denied admission after demand, and disclosing his authority and the object of his visit, they may be forced open by him. In making the search, care must be observed that no other goods than those designated in the Warrant, or such as have been actually stolen, be seized. Should the goods sought for be found, the Constable will seize and keep them in his possession, and he will then also, by virtue of his Warrant, apprehend the person upon whose premises they have been found, and take him before the Magistrate to answer the charge that shall then be preferred against him.

31. IMPORTANCE OF OBTAINING SEARCH WARRANT.—In very many cases, particularly where a charge is likely to mould itself into one of receiving goods, knowing them to

Indictable Offences.

have been stolen, the obtaining of a Search Warrant, in the first instance, will be the most advisable course, since the prosecutor is thereby enabled, at the same time, both to seize the goods upon the premises before they are made away with (and so obtain cogent evidence in support of his case), and apprehend the party suspected of guilt in the transaction; whereas, if a Warrant to *apprehend* merely be obtained in the first instance, great, if not insurmountable, difficulties may afterwards be experienced in getting at the property, and thus a case otherwise almost *conclusive*, may entirely fail for want of the necessary evidence for its support. (a)

Forms of Search Warrant and Information.**FORM OF INFORMATION**

NEWFOUNDLAND.

—— DISTRICT, } Be it remembered that on the —— day of ——,
 —— To Wit. } A.D. 189——, at ——, in the said [District] C. D.,
 of ——, in the said [District] labourer, a credible witness, comes before
 me, the undersigned, one of Her Majesty's Justices of the Peace in and
 for the said [District], and upon his [oath] now duly made by him before
 me the said Justice, informs me the said Justice that on the —— day of
 ——, [or within —— days last past, as the case may be] divers goods and
 chattels of him the said C. D., to wit [two coats, twelve silver spoons, &c.,
describe the articles stolen accurately], were feloniously stolen from [the
dwelling house or as the case may be] of the said C. D., situate at ——, in
 the said District, and that he, this informant, hath probable and reason-
 able cause to suspect, and doth verily suspect, that the said goods and
 chattels are concealed in the Dwelling House of E. F., of ——, in the
 said —— District, Fisherman, and therefore the said C. D. prays that
 justice may be done in the premises.

(Sd.) C. D.

Exhibited and sworn before me, at the }
 time and place aforesaid, }

(Sd.) T. WILLS, J. P.

(a) *Saunders*, p. 169 to 171.

Indictable Offences.

FORM OF SEARCH WARRANT.

NEWFOUNDLAND,
 — District,
 To Wit.

}

To —, the Constable at —, and to all others,
 the Constables, for the said District (or Is-
 land.)

WHEREAS it appears to me, the undersigned, one of Her Majesty's Justices of the Peace in and for the said District, [or Island of Newfoundland and its Dependencies,] by the information, on oath, of C. D., of — in the said District, a credible witness, that on the — day of —, divers goods and chattels, &c., [here copy the information.]

These are, therefore, in the name of our said Lady the Queen, to authorize and require you, with necessary and proper assistants, to enter in the day time into the said [dwelling house] of the said E. F., at —, in the [District] aforesaid [this description must accord with the Information], and there diligently to search for the said goods [as in the Information], and if the same, or any part thereof, shall be found upon such search, that you bring the same [a] * and also the body of the said E. F.* before me or some other of Her Majesty's Justices of the Peace in and for the said [District], to be dealt with according to law.

Given under my Hand and Seal, at —, in
 the said [District] this — day of —,
 A. D. 189—.

T. WILLS, J. P. [L. S.]

III.--Compelling the Attendance of Witnesses.

32. ATTENDANCE OF WITNESSES BY SUMMONS.—If it appear to any Justice, by the oath or affirmation of any creditable person, that any person, within the jurisdiction of such Justice, is likely to give material evidence for the prosecution, and will not voluntarily appear as a witness, such Justice is required to issue a Summons [L. 1] to such person, under his hand and seal, requiring him to appear as a witness at a time and place therein mentioned.

[a] Omit the part between the asterisks wherever the person in possession of the things would be guilty of no offence. [See *ante*, note to sec. 28.]

Backing Warrants, see *ante*, p. 49 & 50.

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33.—If the person so summoned shall, without just excuse, refuse or neglect to appear, then (after proof on oath or affirmation of the service of the summons, either personally, or by leaving the same for him with some person at his last or most usual place of abode), the Justice before whom he ought to have appeared may issue a (L 2) Warrant to bring such person, at a time and place therein mentioned, before the Justice issuing the Summons, or some other Justice, and which Warrant may be backed as before mentioned.

34. WARRANT IN FIRST INSTANCE.—Or if the Justice be satisfied by evidence, upon oath or affirmation, that it is probable such person will not attend to give evidence without being compelled to do so, then instead of issuing such Summons, a Warrant (L 3) may be issued in the first instance, and such Warrant may also be backed in order to its execution in another jurisdiction. [a]

35. REFUSING TO BE EXAMINED, Sec. 16.—If on the appearance of such person, either in obedience to the Summons or by Warrant, he shall refuse to be examined on oath, or, having taken such oath, shall refuse without just cause to answer such questions as are put to him, any Justice present and having jurisdiction, may, by Warrant (L 4) commit the person so refusing to jail, for not exceed-

[a] A witness cannot demand his expenses in the first instance in indictable offences; he cannot refuse to attend upon being served with a Summons or Subpoena, until his expenses are paid. [R. v. James, 1 C. & P. 222.]

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ing seven days, unless he shall in the meantime consent to be examined, and to answer concerning the premises. (b.)

IV.—THE HEARING AND EXAMINATION OF PROSECUTOR'S WITNESSES.

36. THE COURT—PLACES OF EXAMINATION—The room or building where the examinations are taken shall not be deemed an *open Court* for that purpose, and the Justices, in their discretion, may order that no such person shall have access to or remain in such place without their permission, if it appear to them that the ends of justice will be best answered by so doing. (Sec. 19) (c)

37. EXAMINATION OF WITNESSES FOR THE PROSECUTION, sec. 17.—In all cases where any person shall be

(b) Any witness who is in Court without being subpoenaed, is bound to be sworn and give evidence, but as it appears doubtful whether he could be committed under this Section, it will therefore be the most prudent course to serve such refractory witness with a Summons on the spot. *Stone*, p. 7, 28 J.P. 783; but see *Consol. Stat.*, p. 153, when any person present in Court or before a Judicial Officer may be required to testify in the same manner as if he were in attendance upon subpoena issued by such Court or Officer.

(c) This section only applies to the taking of depositions, &c., against a prisoner, upon which occasion the Justice may, if he deem it necessary to secure the ends of justice, exclude all strangers from the room. A Justice of the Peace acting under this statute, does not act as a Court of Justice to determine the guilt or innocence of a Defendant, but as an officer deputed by the law to enter upon a preliminary inquiry whether the Defendant ought to be committed for trial or not. Therefore a prisoner when examined before a Magistrate on a charge of felony, is not entitled as of right to have a person skilled in the law present as an advocate. It is in the discretion of the Magistrates in each particular case whether they will admit or exclude an advocate for the accused. *Cox v. Coleridge*, 2 D. & R. 86; 1 B. & C. 37. *Rex v. Borrow*, 3 B. & A. 432. *Rex v. Staffordshire, JJ.*, 1 Chit. 218. *Collier v. Hicks*, 2 B. & Ad. 663. Upon other occasions, when the Justice acts judicially, as in hearing a charge for an offence punishable upon summary conviction, he does so in public, and in open Court, to which every person has a right to resort. [See 11 & 12 Vic., c. 43, s. 12.] It is a very unusual thing to exclude the prisoner's Counsel, and is not recommended. The legality of such a course is doubted.

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brought before any Justice, charged with any indictable offence, whether he appear voluntarily upon Summons, (a) or shall have been apprehended with or without Warrant, or be in custody for the same or any other offence, such Justice, before committing the prisoner for trial, or admitting him to bail, shall, in the presence of the accused, (who shall be at liberty to put questions to any witness against him,) take the statement in the form prescribed in the Schedule to the Act (M), on oath or affirmation, of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses and by the Justice taking the same; and such Justice shall, before any witness is examined, administer to him the usual oath or affirmation. (b)

(a) A person attending before a Magistrate as a witness, on a charge of felony, after a remand, is privileged from arrest on civil process, *EUNDO MORANDO ET REDEUNDO*, though he was under Recognizance or Summons to appear; *eundo. &c.*, means going, staying, and returning *witness in jail*. By 16 & 17 Vic., c. 30, s. 9. a Judge of the Supreme Court, upon application, by affidavit, may issue a Warrant or Order for bringing up any prisoner confined in jail, &c., under any sentence or under commitment for trial, or otherwise, (except under process in a civil action, suit, or proceeding), before any Court or Justice, to be examined as a witness in any cause or matter, civil or criminal.

(b) There is only one way, and only one safe way, of taking depositions. There should be a charge made explaining to the prisoner what he is accused of. It is always best to have this charge in writing, and to read it for the caption. The witnesses should be sworn in his, the prisoner's presence, and in the presence of the Magistrate, and every word of evidence they give should be taken down in the presence of the accused and the Magistrate, and the prisoner should be asked to cross-examine. No hurry of business, or any other matter, should prevent the Magistrate or the Clerk of the Peace from always following this rule. The prisoner must hear the words come from the lips of the witness. He must be present when the words are written down, and must be offered the opportunity of cross-examining. This rule, and all other directions contained in this Chapter, must be rigidly complied with; and a failure to comply with these rules will probably render the

Indictable Offences.

38. WITNESSES UNABLE TO TRAVEL.—If, upon the trial of the person so accused, it shall be proved by the oath or affirmation of any credible witness that any person whose deposition shall have been taken as aforesaid, is dead, or is so ill as not to be able to travel, (a) and if it also be proved that such deposition was taken in the presence of the accused, and that he or his Counsel or Attorney had a full opportunity of cross-examining the witness, then if such deposition purport to be signed by the Justice before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not, in fact, signed by the Justice purporting to sign the same. (Sec. 17.) (b)

39. EXAMINATION FOR OFFENCE IN ANOTHER JURISDICTION.—Whenever a person shall appear or shall be brought

deposition inadmissible in evidence. And should the witness die, or cannot be found, when the trial proceeds, it may be fatal to the prosecution, and subject the Magistrate to much blame. As soon as the accused is in custody, and the witnesses are forthcoming, the depositions should be taken as speedily as possible, for the convenience of all parties. "Delays are dangerous"

(a) Deposition can be read as evidence if the witness can travel but cannot give evidence from paralysis, [*R. v. Cockburn*, 26 L. J. 13] but not if the witness is absent and resident in a foreign country. [*R. v. Austin*, 25 L. J. 48.] It will be for the Judge to decide whether the proof of inability to travel is sufficient. [*R. v. Stephenson*, 31 L. J. 147.] The deposition may be read before the Grand Jury as well as the Petty Jury. [See *R. v. Clements*, 20, L. J. 193, and *R. v. Scatfe*, 15 J. P. 581, on the trial of the prisoner. *Stone*, p. 8.]

[b] The deposition of a witness taken on one charge may be used in an indictment for another, as in *Reg. v. Beeston*, 24 L. J. R., M. C. (N. S.) 5. where the prisoner was charged before a Magistrate with wounding A, with intent, &c., and A's deposition was taken. A after wards died of the wound, and the prisoner was indicted for his murder; when it was held that on the trial for the murder the deposition of A might be read in evidence, as although it was not on the same technical charge it was taken in the same case, and the prisoner had had a full opportunity of cross examination. (*Glen*, p. 32.)

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before a Justice, charged with an offence alleged to have been committed by him in any District wherein such Justice shall not have jurisdiction, he shall examine such witnesses, and receive such evidence in proof of such charge, as shall be produced before him, within his jurisdiction; and if in his opinion such evidence shall be sufficient proof of the charge he shall commit him to the common gaol for the place where the offence is alleged to have been committed, or shall admit him to bail, and shall bind over the prosecutor (if he have appeared before him) and the witnesses by recognizances; but if such testimony and evidence shall not in the opinion of such Justice be sufficient to put the accused party upon his trial for the offence with which he is so charged, then such Justice shall bind over such witnesses as he shall have examined, by recognizance, to give evidence, and such Justice, by warrant, (R 1) order such accused party to be taken before some Justice in and for the District or place where and near unto the place where the offence is alleged to have been committed, and at the same time deliver the information and complaint, and also the depositions and recognizances so taken by him, to the Constable who shall have the execution of such last-mentioned warrant, to be by him delivered to the Justice before whom he shall take the accused in obedience to the said warrant, and which said depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the said last-mentioned Justice, and shall, together with such depositions and recognizances, as such last-mentioned Justice shall take in the matter of such charge against the said accused party, be transmitted to the Clerk of the Court where the said accused party is to be tried, if

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such accused party shall be committed for trial upon the said charge, or shall be admitted to bail; and in case such accused party shall be taken before the Justice last aforesaid by virtue of the said last-mentioned warrant, the Constable to whom the said warrant shall have been directed, and who shall have conveyed such accused party before such last-mentioned Justice, shall be entitled to be paid his costs and expenses of conveying the said accused party before the said Justice; and upon the said Constable producing the said accused party before such Justice, and delivering him into the custody of such person as the said Justice shall direct or name in that behalf; and upon the said Constable delivering to the said Justice the warrant, information (if any), depositions, and recognizances aforesaid, and proving by oath the handwriting of the Justice who shall have subscribed the same, such Justice to whom the said accused party is so produced shall thereupon forthwith ascertain the sum which ought to be paid to such Constable or other person for conveying such accused party and taking him before such Justice, as also his reasonable costs and expenses of returning; and thereupon such Justice shall make an order (R 2) if such last-mentioned Justice shall not think the evidence against such accused party sufficient to put him upon his trial, and shall discharge him without holding him to bail, every such recognizance so taken by the said first-mentioned Justice, as aforesaid, shall be null and void.

V.--Statement of the Accused and Examination of His Witnesses.

40. **READING OVER DEPOSITIONS.**—After the examination of all the witnesses for the prosecution, the Justice or one of the Justices before whom the examination has been

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completed, shall, without requiring the attendance of the witnesses, read or cause to be read to the accused, the depositions taken against him, and say to him these words, or words to the like effect:

41. CAUTION TO ACCUSED.—“Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you on your trial.”

42. AND whatever the prisoner shall say in answer thereto, shall be taken down in writing, and read over to him, and be signed by the Justice and kept with the depositions of the witnesses, and transmitted with them, as after-mentioned; and on the trial such deposition may be given in evidence against the accused unless it appear that the Justice [a] did not, in fact, sign the same.

43. THE SECOND CAUTION.—Provided always, that the Justice, before the accused shall make any statement, shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to induce him to make any admission or confession of guilt, but whatever he shall then say may be given in evidence

[a] The Magistrate should always sign his name to the deposition immediately after the witness has signed it and been sworn.

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against him upon his trial, notwithstanding such promise or threat. [b].

44. PROVIDED, nevertheless, that nothing herein contained shall prevent the prosecutor, in any case, from giving in evidence any admission or confession, or other statement of the person accused or charged, made at any time, which by law would be admissible as evidence against such person.

45. OBSERVATIONS.—The Act of 30 & 31 Vic., Cap. 35, was passed to remedy defects and difficulties in the administration of justice, especially with respect to witnesses for the accused, and the perpetuation of the testimony of persons dangerously ill. It contains a few other amendments of the law. As it is applicable to the Colony [c] I have given an analysis of it.

[b] The statement of a prisoner may be read if the caution were given, and there be no evidence that any threat or promise has been held out, to induce a confession, although the Justice did not give him to understand that he had nothing to hope or fear; the words in the proviso are directory, and not a condition precedent to the admissibility of the prisoner's statement. [*R. v. Sansome*, 19 L. J. 143.] Justices are, however, recommended by the Chief Justice, in all cases, to address the accused in the words of the proviso, besides giving the printed caution in the imaginary case, Chapter 9, to nullify the effect of any promise or threat of which the Justice of the Peace may not be aware.

Prisoner's Witnesses.—After the directions contained in this Section have been complied with, the Justices must proceed as to witnesses for the accused in the mode directed by 3rd, 4th and 5th Sections of 30 & 31 Vic., Cap. 35, *Post*. A case of Rape occurred lately, in which it was clearly shewn that if the Magistrate had examined the prisoner's witnesses he would never have been committed for trial, the evidence for the defence having established the most conclusive evidence of the prisoner's innocence.

[c] This Act, having direct reference to the operation and execution of 11 & 12 Vic., Cap. 42, is made to apply to this Colony, under latter part sec. 4, p. 226, Consol. Stat.

*Indictable Offences.***Analysis of Act.**

46. WITNESSES OF ACCUSED PERSONS.—In all cases where a y person shall appear or be brought before any Justice charged with any indictable offence, whether committed within this realm or upon the high seas, or upon land beyond the sea, and whether such person appear voluntarily upon summons, or has been apprehended with or without warrant, or be in custody for the same or any other offence, such Justice, before he shall commit such accused person for trial or admit him to bail, shall immediately after obeying the directions of the 18th section of 11 & 12 Vic., Cap. 42, demand and require of the accused person whether he (a) desires to call any witness; and if the accused person shall, in answer to such demand, call or desire to call any witness or witnesses, such Justice shall, in the presence of such accused person, take the statement on oath or affirmation, both examination and cross-examination, of those who shall be so called as witnesses by such accused person, and who shall know anything relating to the facts and circumstances of the case or anything tending to prove the innocence of such accused person, and shall put the same into writing; and such deposition of such witnesses shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the Justice taking the same, and transmitted in due course of law with the depositions; and such witnesses, not being witnesses merely to the character of the accused, as shall in the opinion of the Justice give evidence in any way material to the

[a] If the Justice neglects to make this enquiry, the commitment might possibly be quashed on *Certiorari*.

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case or tending to prove the innocence of the accused person, shall be bound by recognizance to appear and give evidence at the said trial; and afterwards, upon the trial of such accused person, all the laws now in force relating to the depositions of witnesses for the prosecution shall extend and be applicable to the depositions of witnesses hereby directed to be taken [30 & 31 Vic., Cap. 35, Sec. 3]; and all the provisions of 11 & 12 Vic., Cap. 42, relating to the summoning and enforcing the attendance and committal of witnesses, and binding them by recognizance and committal in default, and for giving the accused person copies of the examinations, and giving jurisdiction to certain persons to act alone, shall be read and shall have operation as part of this Act. [*I. l. s. 4.*]

47. EXPENSES OF SUCH WITNESSES.—The Court before which any accused person shall be prosecuted or tried, or for trial, before which he may be committed or bailed, to appear for any felony or misdemeanor, is hereby authorized and empowered, in its discretion, at the request of any person who shall appear before such Court on recognizance to give evidence on behalf of the person accused, to order payment, unto such witness so appearing, of such sum of money as to the Court shall seem reasonable and sufficient to compensate such witness for the expenses, trouble, and loss of time he shall have incurred or sustained in attending before the examining Magistrate, and at or before such Court; and the amount of such expenses of attending before the examining Magistrate and compensation for trouble and loss of time therein, shall be ascertained by the certificate of such Magistrate, granted before the attendance in Court; and the amount of all other expenses and compensation shall be ascertained by the proper officer of the Court, who shall, upon the receipt of the sum of twelve

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cents (*a*), for each witness, make out and deliver to the person entitled thereto an order for such expenses and compensation, together with the said fee of twelve cents. Such witnesses' expenses shall be paid as part of the expense of the prosecution.

VI.--Binding Over Prosecutor and Witnesses by Recognizances.

48. **RECOGNIZANCES.**—The Justice before whom any witness has been examined, may bind, by (O 1) Recognizance, (*b*) the prosecutor, and every such witness, to appear at the next Court, at which the accused is to be tried, to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the accused; and such recognizance shall particularly specify the profession or trade of the person entering into the same, with his Christian and Surname, and the settlement or place of his residence; and if his residence be in a town, the name of the street, (*c*) and the number, if any, of the house in which he resides, and whether he is owner, tenant, or lodger; and the recognizance, duly acknowledged, shall be subscribed by the Justice, and a (O 2) notice thereof signed by him given to the person bound thereby. (*d*) The several recognizances so

(*a*) This fee is not to be taken where the officer is paid by salary, and in certain other cases. [See 32 & 33 Vic., c. 89 s. 10.]

(*b*) *Recognizance* is an acknowledgment, an obligation of record which a man enters into before some Court of Record or Magistrate, duly authorized, with condition to do some particular act, such as to keep the peace, give evidence, &c. This is witnessed only by the record of the Court, or the signature of the Magistrate, and is not like a Bond signed and sealed by the party bound.

(*c*) Many of these minute particulars of description can only be complied with in some few places, like St. John's and Harbor Grace. So long as the name, occupation, and residence, are given, so as to identify the party, it will be sufficient. When the Recognizances are completed, each party bound should be handed the notice of the Recognizance.

(*d*) The papers should be forwarded, as directed, to the Chief Clerk and Registrar Supreme Court, St. John's. See note in Chapter on Practice.

Indictable Offences.

taken, with the written information, if any, the depositions, the statement of the accused, and the recognizances of bail, if any, shall be delivered to the proper officer of the Court in which the trial is to be had, before or at the opening of the Court, on the first day of the sitting thereof, or at such other time as the Judge shall appoint.

49. WITNESS REFUSING TO ENTER INTO RECOGNIZANCE.— If any witness refuse to enter into a recognizance, such Justice may, by his Warrant, (P 1) commit him to the jail for the District in which the accused is to be tried, until the trial, unless the witness shall in the meantime enter into a recognizance, before some Justice of the Peace in the District where the jail is situated; and if the accused shall afterwards be discharged by the Justice, from want of evidence, or other cause, such Justice or any other Justice may, by his order, direct the witness (P 2) to be discharged from custody. (a)

(a) There seems to be no power to require witnesses, whether minors or married women, to find sureties for their appearance. [Stone, p. 9.] It will be advisable to get the husband or father as surety, if you can. Where such a power as this is given to a Magistrate, there will be very little occasion for its use. The Constable who has charge of the case should see that the witnesses are forthcoming in the proper time; and if they leave the District or settlement, should notify the Attorney General of their whereabouts in time.

Remand.—Justices are recommended, where there is a strong *prima facie* case against a prisoner, to use this power of remand when there is a probability of their obtaining more evidence, and where they feel the ends of justice will be served by their doing so. The accused need not have been apprehended under process to warrant a remand, and slight evidence against him upon the charge is sufficient for that purpose; for it is generally impossible, except in the most simple case, to have ready all the evidence, or to present a *prima facie* sufficient to justify a committal on first hearing, &c. [Oke, p. 880, note.]

Whilst an enquiry is pending before a Justice, or a prisoner is in gaol under remand, a Judge of the Supreme Court cannot interfere with that discretion, by ordering the accused to be admitted to bail, like he may do after committal in any case. As a general rule, it may be said

*Indictable Offences.***VII.--Remand.**

50. GENERAL RULES FOR REMAND.—If deemed advisable, from the absence of witnesses or other reasonable cause, the Justice may, by warrant, *remand* the accused from time to time, for a period not exceeding eight clear days (*b*) to the nearest jail; but if the remand be for a time not exceeding three clear days, the Justice may verbally order the Constable, in whose custody the accused may be, or any other Constable named by the Justice, to continue to keep such party in custody until the time appointed for continuing the examination, when any Justice may order the accused to be brought before him, or any other Justice, before the expiration of such period.

51. Instead of detaining the accused in custody during the period to which he is remanded, any one Justice before whom he shall be brought, may discharge him, upon his entering into a recognizance, (O 2) and (O 3) with or without sureties, conditioned for his appearance, at the time

that, in practice, it is not usual, on demand, to admit to bail, (especially where the precise nature or extent of the charge is undeveloped, unless property involved is very small), in those cases in which an accused is not entitled to be bailed after committal; in other cases, it is. [*Oke*, p. 881, note.]

The reason for this caution is obvious; the accused, if at liberty, may keep witnesses out of the way, secrete the stolen property, and in many ways defeat the ends of justice, and prevent the true facts being brought out in the case. Justices will, of course, make these remands as short as consistent with the nature of the case, and the difficulty of bringing the evidence forward.

(*b*) The limitation of eight days does not apply to adjournments in summary proceedings under 11 & 12 Vic., c. 43. s. 16. The course adopted in the Metropolitan Police Courts is to remand at the latest till the day following the corresponding day in the ensuing week. [36 J. P. 13.] But the usual meaning of these words "clear days" would be eight intervening days between the day of remand and of hearing. We do not know on what principle a different rule of interpretation is acted upon in London.—*Stone*.

Indictable Offences.

and place appointed for the continuance of the examination. (a)

52. And if the accused party do not appear upon the recognizance, the Justice may make return of the recognizance, and of the forfeiture thereof, under his hand and seal, in the following form:—

53. FORM.—

I, Thomas Wills, of Island Cove, in the Northern District, one of Her Majesty's Justices of the Peace for the said District of Newfoundland, do hereby certify and return unto the Honourable the Supreme Court, that the Recognizance hereto annexed, marked by me, was on or about the — day of June, in the year 1895, taken before me; and that the same has become forfeited by breach of the condition thereof, by Job Stiggins, therein named.

Given under my Hand and Seal, at Island Cove, this — day of —, A.D. 1895.

THOMAS WILLS. [Seal.]

VIII.—BAIL.

54. BAIL IN FELONY AND CERTAIN MISDEMEANORS.—

Where any person shall appear or be brought before a Justice charged with any felony (except treason), assault with intent to commit any felony, attempt to commit any felony,

(a) *Consol. Stat.* p. 170.—This is the rule to follow when the condition of the Recognizance is not to appear in the Supreme Court. When the condition is to appear in the Supreme Court, the course is regulated by Sec. 1, *Consol. Stat.*, p. 169.

1. Whenever any recognizance returned into or given to the Supreme Court shall become forfeited by breach of the condition thereof, the Court may, by a rule *nisi*, to be made upon sufficient affidavits, shewing the execution and forfeiture of such recognizance, and to be served upon such of the parties executing the same as shall be within the jurisdiction of the Court, require such parties to shew cause why the said recognizance should not be declared to be forfeited, and the amount of the penalty thereof paid by them; and thereupon, after hearing the parties to such rule, or such of them as may appear upon the same, or in default of appearance, make an order pronouncing such re-

Indictable Offences.

obtaining or attempting to obtain property by false pretences, misdemeanor in receiving property stolen or obtained by false pretences, perjury, or subornation of perjury, concealing the birth of a child by secret burying or otherwise, wilful or indecent exposure of the person, riot, assault in pursuance of a conspiracy to raise wages, assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, neglect or breach of duty as a peace officer, such Justice may, in his discretion, [a] admit such person to bail, upon his procuring such surety or sureties as, in the opinion of the Justice, will be sufficient to insure the appearance of the accused at the time and place of trial, and take the recognizance of the accused and his surety or sureties, conditioned for his appearance at the trial; and where a person charged with any indictable offence shall be committed for trial, the Justice who signed the warrant of commitment may, at any time afterwards, and before the first day of the sitting or session at which he is to be tried, or before the day to which the same may be adjourned, admit such accused person to bail in manner aforesaid; or if the committing Justice or Justices shall be of opinion that, for any of the offences aforesaid, the ac-

cognizance forfeited, and directing the payment into Court of the penalty thereof by the parties liable, or discharging such rule *nisi*, as may be lawful in that behalf: Provided that the Court, upon sufficient special cause, may, if they shall see fit so to do, lessen or altogether remit the amount of such penalty.

[If the return, Form 53, be made by any other than the Justice before whom the recognizance was entered into, or the breach of condition occurred, or was shewn, let the words "all which is satisfactorily proven to me," be added after the word "named."]

[a] Although it is discretionary with the Justice whether he will accept bail or not, it has been held by Lush, J., and Brett, J., that a Judge has no discretion in the case of a misdemeanor, as, for instance, obtaining goods by false pretences, but is bound to admit to bail. [See 34 J. P. 701.]

Indictable Offences.

cused person ought to be admitted to bail, he or they shall in such cases, and in all other cases of misdemeanors, certify, on the back of the warrant of commitment, his or their consent to such accused person being bailed, stating the amount of bail which ought to be required; and any Justice attending or being at the gaol or prison [a] where the accused shall be in custody, on production of such certificate may admit him to bail [b] in manner aforesaid; or if it shall be inconvenient for the sureties to attend at the prison to join in the recognizance with the accused, then the committing Justice may make a duplicate of the certificate, and on the same being produced to any Justice for same District or place, the last-mentioned Justice may take recognizance of the sureties; and on such recognizance being transmitted to the keeper of the prison, and produced, together with the certificate of the commitment, to any Justice attending at such gaol or prison, such last-mentioned Justice may take the recognizance of the accused, and order him to be discharged as to that commitment. [*Id.* s. 23.]

55. BAIL IN OTHER MISDEMEANORS. Where any person shall be charged before any Justice with any indictable misdemeanor other than those before mentioned, such Justice, after taking the examinations in writings, shall admit him to bail instead of committing him to prison, or if he

[a] The gaoler will not, it seems, be justified in taking the prisoner from the gaol to the Magistrate. [14 J.P. 102.]

[b] A single Justice, being the committing Justice, may admit to bail in all felonies; and if such committing Justice certify on the back of the commitment that such person ought to be admitted to bail, and the amount of bail, any Justice attending or being at the prison may admit such person to bail. If the application for bail be made to a Judge at Chambers, a copy of the depositions should be brought before the Court in the first instance. [*Ex parte Sutcliffe*, 19 J.P. 375.]

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shall have been committed to prison, and shall apply to any one of the visiting Justices of the prison, or to any other Justice of the same District, before the first day of the sitting or sessions at which he is to be tried, or before the day to which the same may be adjourned, such Justice shall accordingly admit him to bail. And in all cases where such accused person, in custody, shall be admitted to bail (a) by a Justice other than the committing Justice, the Justice so admitting to bail shall forthwith transmit the recognizance to the committing Justice or Justices, or one of them, to be by him or them transmitted to the proper officer. [*Id.* s. 23.]

56. BAIL—OBSERVATIONS ON.—The 23rd Section of this Act enumerates the different offences in which the Magistrate may, in his *discretion*, take bail; in all other cases, if sufficient bail is offered, he is bound to take bail. Bail is not to be taken in treason, and bail is never taken by a Magistrate in cases of murder or manslaughter. In the Appendix of Forms of Indictable Offences, I have given a list of the most common offences, and in each case it is shewn when bail is discretionary or compulsory.

57. It has been laid down by an eminent authority, that the power of a Magistrate to accept or refuse bail, even in cases where the accused has a right to be bailed, is a *judicial* duty; and an action will not lie against him for refusing to take bail, in such cases, without proof of express malice, even though the sureties tendered are found

[a] From *Linford v. Fitzroy*, 18 L.J. 108, it appears that a Magistrate is not liable to any action for refusing to take bail without proof of express malice.

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by the Jury to have been sufficient. *Sinford v. Fitzroy*, 18 L.J. (N.S.) M.C. 108; 13 Q.B. 240; *Oke*, p. 916.

58. In coming to a decision whether an accused should or should not be admitted to bail, the Justice should remember that the only purpose of a committal to prison, before trial, is to "*ensure the appearance of the accused person at the time and place when and where he is to be tried.*" The point, therefore, that the Magistrate should carefully consider, especially where bail is discretionary, is there sufficient security for the prisoner's *appearance* at his trial; and if the Justice feels satisfied that by admitting the accused to bail, his appearance to take his trial will not be imperilled, his duty is obvious.

59. Upon such a question, many circumstances have to be taken into consideration by the Magistrate, and the probability of the prisoner's surrendering to take his trial will be more or less influenced by his position in life, his wealth, &c., the magnitude or specially disgraceful character of the charge against him, its effect upon him in society, the nature of the evidence, whether it is very *strong*, so as to make his conviction almost a certainty, contradictory or *doubtful*, so as to give him a chance of acquittal, or *weak*, so as to make his acquittal almost a certainty. Another important element to consider is the probable severity of the punishment; and I may also mention another consideration, and a very important one in this country. The accused's opportunities of escaping, and the ties that bind him to the country, his wife and children, parents, &c.; all these matters will affect the Justice's judgment in taking bail. He must remember, however, that whilst the

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probability of a conviction increases, the doubt of the prisoner's surrender, his actual or admitted guilt, is not, of itself, a conclusive reason against admitting him to bail.

60. To refuse bail in a case in which the Defendant is *entitled* to it, is in the eye of the law a serious dereliction of duty, and may subject the Justice to a criminal information. [*Rex v. Badger*, 4 Q.B., 468; *Reg. v. Saunders*, 2 Cox, c.c. 249.]

61. When bail is offered in a case in which the Defendant has a *right* to be bailed, the Justice should be careful not to say anything by way of dissuasion, a Magistrate not being justified in interfering to prevent a man from assisting his neighbor; neither in such a case should the Magistrate allow himself to be influenced in rejecting persons offered as bail, on any views of a political nature. The chief consideration will be the substantial character of the bail, and their ability to perform the conditions of their recognizance. [*Reg. v. Saunders, Supra*]

62. It is usual to have two sureties, though if one will secure the appearance of the accused, one may be taken. (a) They should be householders, though there is no imperative rule upon the subject; however, as such sureties only should be received as may be made answerable in case of default, it is obvious that a person who is not a householder, having a settled habitation wherein a living may be made, can answer the purpose intended by admitting to bail. [*Saunders*, p. 226.]

(a) On remand, the accused's own recognizance, (if the Justice consents to bail being taken,) is sufficient. [S. 21, 11 & 12 Vic., c. 42. *Oke*, 880, 881.]

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63. For the purpose of determining the ability of the person or persons tendered as bail, whose names the Justice may require to be given to the prosecutor some time previously, say twenty-four or forty-eight hours, the Justice may administer to them an oath, in this form:—"To all such questions as may be demanded of you, you shall true answer make; so help you GOD." The Justice may then ask them of their means, property, and liabilities, &c.

64. As regards the amount of bail, this will depend upon the magnitude of the offence, and the position and wealth of the parties, and will, in every case, be a fit subject for the exercise of a wise discretion. No precise rule can be laid down; care, however, should be observed, that whilst the amount is not unnecessarily heavy, it is nevertheless sufficiently large to make its forfeiture a matter of serious inconvenience to the parties. The recognizance of the accused himself is usually double that of each of his sureties.

65. Should the Justice decline to take bail, the prisoner may apply to the Supreme Court, or to one of the Judges of that Court, for permission to be admitted to bail.

66. At any time during which the responsibility of the bail continues, they may surrender the Defendant to custody, and so release themselves of their liability; to do this, they should either apprehend him, and take him before a Justice, who thereupon will commit him or require him to give fresh bail, or the bail may make a complaint, on oath, before a Justice, of their belief that the Defendant will abscond, and thereupon a warrant will be granted for

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his apprehension, and this would seem to be the better course of the two, as it precludes a chance of a breach of the peace.

67. **LIBERATE TO KEEPER.**—Where a Justice shall admit to bail any person after commitment, such Justice shall send to the keeper of the prison a warrant (S. 5) of deliverance under his hand and seal requiring him to discharge the person admitted to bail, if he be detained for no other offence. [*Id.* s. 24.]

IX.—Discharge or Committal of Prisoner for Trial.

68. **DISCHARGE.**—If, after hearing all the evidence against the accused, the Justice then present shall be of opinion that it is not sufficient to put such accused party upon his trial, he shall order him to be forthwith discharged.

69. **COMMITTAL.**—But if the evidence is, in the opinion of the Justice, sufficient, or if it raise a strong or probable presumption of the guilt of the accused, such Justice shall, by warrant, (T 1) commit him to the gaol for trial, or admit him to bail. [*Id.* s. 25.]

70. **CONVEYING PRISONERS TO GAOL.**—The Constable, or any of the Constables to whom the Warrant of Commitment is directed, shall convey the accused to prison, and deliver him, together with the warrant, to the Keeper, who shall give a receipt for such prisoner, setting forth the state and condition in which he was delivered; and in all cases where such Constable shall be entitled to his expenses for conveying such person to prison, the committing Justice, or any Justice for the District wherein the offence is alleged in the warrant to have been committed, shall ascer-

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tain the sum which ought to be paid to the Constable for conveying the accused to prison, and also his expenses in returning, and make an order for payment thereof. But if it appear to the committing Justice that the prisoner has money sufficient to pay the expenses of conveying him to prison, he may order such money, or a sufficient part thereof, to be applied for the purpose. [*Id.* s. 26.]

X.—Miscellaneous.

71. COPIES OF DEPOSITIONS.—At any time after the examinations are completed, and before the first day of the sitting of the Court at which any person so committed, or admitted to bail, is to be tried, such person shall be entitled to have, from the officer having the custody of the same, (a) copies of the depositions on which he shall have been committed or bailed, on payment of a sum not exceeding 1½d. British sterling, for each folio 90 words. (Sec. 27.)

72. FORMS OF SCHEDULE.—The several forms in the Schedule to this Act, or forms to the like effect, shall be deemed valid. (Sec. 28.)

73. STIPENDIARY MAGISTRATES, &c.—Every stipendiary Magistrate shall have power to do, alone, whatever is authorized by this Act to be done by any one or more Justices. Powers of the same character are given to Stipendiary Magistrates, under the 6th Section, Cap. 13, Consol. Stat., quoted *ante*, Cap. 2, page 8, Manual.

(a) This section does not apply to depositions on which the prisoner has been remanded [*Ex parte Fletcher*, 13 L. J. 67], but only to persons bailed or committed for some offence for which they are to be tried, and with the view of enabling them to prepare for trial; and not to a person committed for default of sureties, and who has been discharged at the sessions. [*Ex parte Humphreys*, 19 L. J. 189.]

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74. The remaining Sections of this Act refer to Berwick-upon-Tweed, and the non-extension of the Act to Scotland, Ireland, &c., and to the repeal of Statutes.

75. DEPOSITION OF PERSON DANGEROUSLY ILL.—Whenever it shall be made to appear to the satisfaction of any Justice that any person dangerously ill, and in the opinion of some registered medical practitioner [a] not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, and it shall not be practicable for any Justice to take an examination or deposition in accordance with the provisions of 11 & 12 Vic., c. 42, s. 17, of the person so being ill, it shall be lawful for the said Justice to take in writing the statement on oath or affirmation of such person so being ill, and such Justice shall thereupon subscribe the same, and shall add thereto by way of caption a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof, and, if the same shall relate to any indictable offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same with the said addition to the proper officer of the Court for trial at which such accused person shall have been so committed or bailed; and in all other cases he shall transmit the same to the Clerk of the Peace of the District in which he shall have taken the same, who is hereby required to preserve the same, and file it of record; and if afterwards, upon the trial of any offender or offence to which the same may relate, the per-

[a] This means a Doctor with a regular medical diploma.

Indictable Offences.

son who made the same statement shall be proved to be dead, or if it shall be proved that there is no reasonable probability that such person will ever be able to travel or to give evidence, it shall be lawful to read such statement in evidence, either for or against the accused, without further proof thereof, if the same purports to be signed by the Justice by or before whom it purports to be taken, and provided it be proved to the satisfaction of the Court that reasonable notice (see *R. v. Quigley*, 18 L. T. (N.) 211), of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person, or his counsel or attorney, had or might have had, if he had chosen to be present, full opportunity of cross-examining the deceased person who made the same. [*Id.* s. 6.]

76. PRISONER'S PRESENCE.—Whenever a prisoner in actual custody shall have served or shall have received notice of an intention to take such statement as hereinbefore mentioned, the Judge or Justice by whom the prisoner was committed, or the visiting Justice of the prison in which he is confined, may, by an order in writing, direct the gaoler having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement; and such gaoler shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner shall have been conveyed. [*Id.* s. 7.]

77. MONEY FOUND ON PRISONER.—Where any prisoner shall be convicted, either summarily or otherwise, of larceny

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or other offence which includes the stealing of any property, and it shall appear to the Court by the evidence that the prisoner has sold the stolen property to any person, and that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the prisoner on his apprehension, it shall be lawful for the Court, on the application of such purchaser, and on the restitution of the stolen property to the prosecutor, to order that out of such moneys a sum not exceeding the amount of the proceeds of the said sale be delivered to the said purchaser. [*Id.* s. 9.]

78. REMOVAL OF PRISONER WITHOUT HABEAS CORPUS.—Where recognizances shall have been entered into for the appearance of any person to take his trial for any offence at any Court of criminal jurisdiction, and a bill of indictment shall be found against him, and such person shall be then in the prison belonging to the jurisdiction of such Court, under Warrant of Commitment, or under sentence for some other offence, it shall be lawful for the Court, by order in writing, to direct the governor of the said prison to bring up the body of such person in order that he may be arraigned upon such indictment without Writ of *Habeas Corpus*, and the said governor shall thereupon obey such order. [*Id.* s. 10.]

As a reminder to Justices in taking examinations in indictable offences, under this Act, I now give a brief note of the various steps of the procedure, taken from *Oke*, p. 887 :

- 1.—Prosecutor's Council or Attorney to open case.
- 2.—Depositions of Prosecutor's Witnesses taken.

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3.—Accused invited at the close of each examination to put questions to the witness; such cross-examination being distinguished in the deposition from the examination in chief.

4.—When case for prosecution completed, depositions read over to and signed by the witnesses, (it is generally more convenient to read over each deposition to the witness, when finished, and have it then signed and completed); when examinations are completed, depositions must all be read over, but the witnesses need not be present at the reading.

5.—In long cases, or where there have been several examinations, it is convenient to hear Prosecutor's Counsel or Attorney. At this stage sum up the evidence, and give his reasons for the committal of the accused on the charges alleged. (a)

6.—If evidence insufficient, and not calling for an answer, accused discharged.

7.—If evidence sufficient for an answer, Attorney of accused to address the Magistrate, if case for prosecution completed; or if not completed, and remand intended, to state his objections to a remand.

8.—If evidence incomplete, accused remanded or bailed until a future day.

9.—If evidence sufficient, and case completed, depositions read as No. 4, and the Magistrate or Clerk of the Peace has informed accused of the precise legal charge against him, (as in the form in caption.)

(a) There is no right of reply to the prosecution (unless the Magistrate allows it) after the accused has made his statement and called his witnesses, if any.

Indictable Offences.

10.—Justice to caution accused, as explained at page 62, Manual, and under 30 & 31 Vic., c. 35, s. 3, p. 63.

11.—Accused's statement to be taken down and read over to him.

12.—Accused's witnesses, if any, heard, and their depositions taken.

13.—If accused calls witnesses, Prosecutor or his Attorney to cross-examine them.

14.—If case not sufficient to put accused on his trial, accused to be discharged, if otherwise committed or held to bail for trial.

15.—Bailing accused.

16.—Binding over prosecutor and his witnesses to prosecute and give evidence, and also accused's witnesses.

*Proceedings in an Imaginary Case.***Indictable Offences--Proceedings in an Imaginary Case.**

SECTION

- 1.—Introductory observations.
- 2.—Imaginary case.
- 3.—Information.
- 4.—Warrant.
- 5.—Commencement of hearing.
- 6.—Charge—Form of.
- 7.—Reading charge to prisoner.
- 8.—Caption.
- 9.—Swearing witnesses at hearing
- 10.—Directions to prisoner when to cross-examine.
- 11.—Taking depositions.
- 12.—Mode of stating cross-examination.
- 13.—Reading over and signing depositions, &c.
- 14.—Discharge or commitment.
- 15.—Observations of prisoner during examination to be taken down.

SECTION

- 16.—Statement of accused—Form.
- 17.—Examination of accused's witnesses.
- 18.—Commitment or bail—Recognition, &c.; forwarding depositions.
- 19.—Remand.
- 20.—Form of Remand.
- 21.—How to procure prisoner's attendance before expiry of remand.
- 22.—Form to bring up prisoner.
- 23.—Bail.
- 24.—Recognition of Bail—Form.
- 25.—Condition to be endorsed—Form.
- 26.—Notice to be given.
- 27.—Form of such notice.
- 28.—Commitment.
- 29.—Form of Commitment.

1. In order to make the the course of proceeding under the foregoing Chapter as clear and intelligible as possible, I explain in this Chapter what should be done by a Justice of the Peace at each step in a suppositious case of larceny. I have left out all about remand, bail, binding over prosecutor and witnesses, &c., which are all explained under the various heads under the foregoing Chapter, which must read together with this Chapter; but bearing in mind the rules with respect to those subjects mentioned in the previous Chapter, exactly the same course must be followed by the Justice, as he is directed to do in this Chapter; in other cases of indictable offences, such as murder, manslaughter, concealment of birth, &c., the only difference will

Proceedings in an Imaginary Case.

be in the charge in the caption (or heading) of the depositions.

2. We will suppose, then, that John Jones, Planter, of Island Cove, in the Northern District, has had ten pounds stolen out of his box, and that William Smith and Jane Butler, his servants, can give evidence respecting the thief, whom we will call Job Stiggins.

3. John Jones goes before the next Justice, whom we will call Thomas Wills, and states the facts to his Worship. Mr. Wills immediately prepares an information, in accordance with Form (A) in the Appendix of Forms. As soon as it is prepared, and William Smith, the witness, or John Jones himself, has signed it, or placed his mark to it, Mr. Wills hands William or Jones the Testament, which William is to hold in his right hand, and repeats the follow oath to him:—"You make oath that the contents of this, your information, which has been read over to you, and to which you have signed your name, (or placed your mark) is correct and true in every particular; so help you God." William then kisses the Testament, and Mr. Wills then fills in the date, and writes his name, J. P. after it, under the words, "sworn, &c.," at the left hand corner of the information.

4. Mr. Wills then prepares his Warrant (B) or his Summons, (C) gives it to the Constable who arrests or summons Job Stiggins, or Job Stiggins attends before Mr. Wills, without either Summons or Warrant; it makes no difference so long as he is before the Magistrate, and there is a charge against him.

Proceedings in an Imaginary Case.

5. Mr. Wills then commences the proceedings by charging Job Stiggins with the offence.

6. CHARGE.—You, Job Stiggins, stand charged before me, one of Her Majesty's Justices of the Peace for the Northern District of Newfoundland, for that you, Job Stiggins, on the fifth day of June, in the year eighteen hundred and seventy —, at Island Cove, aforesaid, certain money, to wit, ten pounds, or forty dollars, the property of John Jones, feloniously did steal, take, and carry away, against the form of the Statute in such case made and provided.

7. READING CHARGE TO PRISONER.—Mr. Wills reads this charge to Job, the prisoner, from the caption or heading to the depositions of the witnesses, William Smith and Jane Butler, which he is about to take, and which is in the following form :—

8. CAPTION.—

FORM (M.)

NEWFOUNDLAND.

NORTHERN DISTRICT,	}	The examinations of William Smith of Island Cove, to wit.
Island Cove,		
to wit.		

land Cove aforesaid, Fisherman, and Jane Butler, of the same place, single woman, taken on oath this — day of June, in the year of Our Lord One Thousand Eight

Year.—Consol. Stat. p. 3. Year alone means year of our Lord.

Money.—This includes notes and all other descriptions of money. [*Oke*, p. 848.]

Time.—Whilst it is well to be accurate about the time when an offence was committed, and also as to the amount stolen in larceny, it is not necessary to prove any particular value; there must be some value. Where, however, in summary proceedings, the jurisdiction is limited to a specified amount, a sum not exceeding the limit of the summary jurisdiction must appear on the face of the proceedings. The offence need not be stated in the information to have occurred on a particular day.

Proceedings in an Imaginary Case.

Hundred and Seventy —, at Island Cove, in the District aforesaid, before the undersigned, one of Her Majesty's Justices of the Peace for the said District, in the presence and hearing of Job Stiggins, who stands charged this day before me, for that he, the said Job Stiggins, on the fifth day of June, &c., (as in the foregoing charge.)

9. SWEARING WITNESSES AT HEARING.—Mr. Wills then, in the presence of Stiggins, swears William Smith in this manner :—

“The evidence you shall give in the present enquiry, shall be the truth, the whole truth, and nothing but the truth,—So help you God.”

10. DIRECTIONS TO PRISONER WHEN TO CROSS-EXAMINE.—Mr. Wills then tells the prisoner that after each witness has been examined he may ask him any question he thinks fit; but that he must not interrupt the witness whilst giving his evidence and that after all the witnesses have been examined, he may make his own statement.

11. TAKING DEPOSITIONS.—Mr. Wills then proceeds to take down the evidence, commencing the Depositions thus :

This Deponent, William Smith, on his oath, saith as follows :—“I saw Job Stiggins go into the room.” and so

It will be sufficient if the party laying the information state that the offence was committed between a certain day and some day prior to the information being laid. A conviction stating any day between these dates will be good. [*Stone*, p. 423.]

Caption.—The practice is to have the Caption a fly sheet, and the different depositions taken on the one day follow in the order of being taken, each commencing, “this Deponent, —, on his oath, saith.” When, however, the examination goes into a subsequent day, it is necessary to have a second Caption, as *all depositions must have a Caption*, only that instead of setting out the charge again, you may abbreviate it; thus, after the words “in the presence and hearing of Job Stiggins, who stands charged this day before me.” add “with the before-mentioned offence,” instead of setting out the whole charge again.

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on, in the first person. It must also be taken down exactly as William Smith tells it, omitting what is irrelevant, and not strictly evidence. As soon as the evidence of the witness is finished, Mr. Wills will then ask the prisoner, Job Stiggins:—Do you wish to ask the witness any questions; if he says “no,” then Mr. Wills proceeds with the next witness, Jane Butler, precisely in the same manner.

12. MODE OF STATING CROSS-EXAMINATION.—If, however, the prisoner wishes to ask any questions, Mr. Wills writes in the left hand corner of the Depositions thus :

Cross-examined by the prisoner, Job Stiggins ; and he will then proceed to take down the evidence given by Smith in answer to the prisoner’s questions.

13. READING OVER AND SIGNING DEPOSITIONS, &c.—When the evidence is all taken, the caption, and the different sheets of paper, must be tied together, and then Mr. Wills proceeds to read them all over in presence of the witnesses and the prisoner; when all this is done, each witness signs his deposition, and after he has signed it, Mr. Wills will swear him again in this manner,—(or it may be read over and signed by each witness and sworn, as each witness’s evidence is completed.) “You make oath that the contents of this, your Deposition, which has been read over and explained to you, and to which you have signed your name, (or placed your mark), is correct and true in every particular,—So help you God.” When this is done, Mr. Wills then writes at the foot of the Deposition what is called the “*Jurat*,” from the Latin “*Juro*,” I swear.

Taken and sworn before me, at Island Cove,
this—day of—, A. D., 1875, (adding,
in case of a marksman, having first been
read over and explained to the said Depo-
nent.]

[Sd.] THOMAS WILLS, J. P.

Proceedings in an Imaginary Case.

14. DISCHARGE OR COMMITMENT.—When these formalities have been gone through with both witnesses, Mr. Wills has then to consider the question, is there sufficient evidence to warrant him in committing the prisoner to jail to take his trial for the offence? (a)

15 OBSERVATIONS OF PRISONER DURING EXAMINATION TO BE TAKEN DOWN.—We will suppose in this case that Mr. Wills having heard the whole case, and possibly remarks from the prisoner also, for it has been decided that the caution mentioned further on is not necessary until all the Depositions are taken down, and the case for the prosecution completed. "Everything occurring before the Magistrates should be taken down in writing, and returned with the depositions, as where the prisoner voluntarily makes a remark or statement which is *material* during any period of the examination, for it is admissible as evidence, although the prisoner's statement is afterwards taken in writing." [b]

(a) A Magistrate is clearly bound, in the exercise of a sound discretion, not to commit any one unless a *prima facie* case (this means a case which *prima facie* on the first face or first appearance) is made out against him by witnesses entitled to a reasonable degree of credit. Justices ought not, therefore, to balance the evidence and decide according as it preponderates, for this would, in fact, be taking upon themselves the functions of the Petty Jury, and be trying the case; but they should consider whether or not the evidence makes out a *strong* or *provable* or even a *conflicting* case of guilt, in any one of which cases they should commit the accused to trial. If, however, from the slender nature of the evidence, the unworthiness of the witnesses, or the conclusive proof of innocence produced on the part of the accused, they feel that the case is not sustained, and that if they sent it for trial he must be acquitted, they should discharge the accused. [Per Justice Bayley. *Cox v. Coleridge*, (1 B. & C. 50). *Oke*, p. 898.]

[b] EXAMPLE OF HOW SUCH OBSERVATIONS SHOULD BE NOTED.—When the prisoner, therefore, Job Stiggins, in the course of William Smith's examination, says, for instance, "There was not ten pounds in the purse," it will be obvious that this statement is material, and it should

Proceedings in an Imaginary Case.

16. Mr. Wills, as we have said, then being satisfied that there is sufficient evidence against the prisoner to commit him for trial, and having read over all the depositions to the prisoner, he then reads this paper to the prisoner, which is fastened to the depositions :

FORM (N.)

NEWFOUNDLAND.

NORTHERN DISTRICT, } You, Job Stiggins, stand charged before the
Island Core, } undersigned, one of Her Majesty's Justices of the
to wit. } Peace in and for the Northern District aforesaid,

this — day of June, in the year of Our Lord One Thousand Eight Hundred and Seventy—, for that you, Job Stiggins, on the fifth day of June, in the year Eighteen Hundred and Seventy —, at Island Cove, aforesaid, [a] certain money, &c., — and the said charge being read to the said Job Stiggins, and the witnesses for the prosecution, William Smith and Jane Butler, being severally examined in his presence, the

be taken down thus, and distinguished in the deposition. The prisoner, Job Stiggins, here voluntarily said "There was not ten pounds in the purse;" or suppose, when asked if he has any questions to ask the witness, he says "no; all that he has said is true," it will thus be inserted in the deposition: The prisoner, Job Stiggins, on being asked if he wished to put any question to the witness, voluntarily said, "no; all that he said, &c."

See under the head *confessions and threats*, as to when confessions are admissible in evidence, under the head "*Practice*," Post.

Should the prisoner at this stage of the proceedings, (that is before the examination of prosecutor's witnesses are finished,) desire to make a statement, he should be informed by the Magistrate "that he was not obliged to say anything now, but that whatever he did say would be taken down in writing, and might be used in evidence against him." If, after this, he makes a statement, it should be inserted in the deposition, thus:—"The prisoner at this stage of the proceeding said he desired to make a statement, and having been given clearly to understand that he was not obliged to say anything now, but that whatever he did say would be taken down in writing, and might be used in evidence against him, voluntarily said as follows," (here put his very words.) When the Magistrate re-examines, after the prisoner or his counsel's cross-examination, it should be distinguished thus:—"Re examined by the Magistrate." When the prisoner cross-examines, the questions as well as the answers may be taken down, if desirable.

[a] This charge is a copy of the charge in the Caption.

Proceedings in an Imaginary Case.

said Job Stiggins is addressed by me as follows:—"Having heard the evidence, do you wish to say anything in answer to the charge? you are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial. And you are also clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to you, to induce you to make any admission or confession of your guilt; but whatever you shall now say may be given in evidence against you upon your trial, notwithstanding such promise or threat. Do you desire to call any witness? if you do, it must be done after you have made your own statement."

Here put down whatever Job Stiggins may choose to say, and in his very words as nearly as possible; get him to sign it, if he will do so. If Job Stiggins says anything, put it down thus:—

Whereupon the said Job Stiggins saith, "I have nothing more to say: I have no witnesses to call."

his
JOB X STIGGINS.
mark.

Taken before me, at Island Cove, aforesaid, }
the day and year first above-mentioned. }

THOMAS WILLS, J. P.

17. AS TO THE EXAMINATION OF ACCUSED'S WITNESSES.
—THE ORDER OF PROCEEDINGS, &c. *See Ante*, p. 411 and 412.

If the accused, after making a statement, calls witnesses to account for his possession of the stolen property or the like, write as follows at the foot of his statement:—

"The above named prisoner, Job Stiggins, after making the foregoing statement in answer to the charge, calls the following witnesses to be examined on his behalf, namely: G. H., of —, in the said District, Fisherman, and —. The said G. H. on his oath, saith as follows." [Stating his very words, and so on, as in taking the depositions of Prosecutor's witnesses.]

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18. Mr. Wills then prepares a Commitment to send Stiggins to the jail, (see under the head Commitment,) or admits him to Bail. (See *Bail*, page 417.) Takes the Recognizances of Jones, and the two witnesses, and forwards the depositions and all other papers to the Chief Clerk and Registrar of the Supreme Court; he should also write the Attorney General, and send him copies of all the papers. Should the case be of a very serious character, as to where he is to send the prisoner and depositions.—*See Post*, Sec. 28 of this Chapter respecting Commitment.

19. We will suppose, in our imaginary case, that Mr. Wills has not all the witnesses present, and he wishes to remand Job Stiggins for not more than *three* days; he tells the prisoner that he is remanded for three days, and he directs the Constable either to keep him in his custody, where there is no jail, or else to take him to jail, (any place of security will answer where there is no jail, but the prisoner must be properly fed and treated humanely), and to bring him back at the expiration of the time. Mr. Wills also will write after the last deposition taken before the remand,—

“The prisoner was then remanded for three days.”

Supposing that Mr. Wills wished to remand the prisoner for a longer time, he would then have to fill up the following Warrant, which must not be for a longer period than eight days. See *Ante*, p. 416 “Remand.”

Proceedings in an Imaginary Case.

FORM (Q 1.)

20.

NEWFOUNDLAND.

NORTHERN DISTRICT, }
 Island Cove, }
 to wit.

*To the Constables of the Northern District, and
 to the Keeper of the Jail at —, [the nearest
 Jail in the District.] [a]*

WHEREAS Job Stiggins, hereafter called the accused, was on the — day of —, charged before the undersigned, one of the Justices of the Peace for the Northern District, for that the accused, on the fifth day of June, in the year Eighteen Hundred and Seventy —, at Island Cove, aforesaid, certain money, to wit, forty dollars, the property of John Jones, feloniously did steal, take, and carry away, against the form of the Statute, in such case made and provided. These are therefore to command you, the said Constables, in Her Majesty's name, forthwith to convey the said accused to the said Gaol, and there to deliver him to the Keeper of the said Gaol, together with this Precept; and I hereby command you, the said Keeper of the said Gaol, to receive the said accused into your custody, in the said Gaol, and there safely keep him until the — day of —, when I hereby command you to have him, the said accused, before me or some other Justice for the said District, as may then be there, to answer further to the said charge, and to be further dealt with according to Law, unless you shall be otherwise ordered in the meantime.

Given under my Hand and Seal, at Island Cove,
 aforesaid, this — day of —, in the year of
 Our Lord One Thousand Eight Hundred and
 Seventy —.

T. WILLS, J. P. [L. S.]

21. Should it be desirable to have the prisoner before the Magistrate prior to the expiration of the eight days, the Magistrate might send a written message to the Keeper of the Gaol, by the Constable, requesting such Keeper to de-

[a] With respect to this Form, and all other Forms of Warrants and Commitment, observe the note p. 393.—The Police are all sworn in for the Colony.

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liver the prisoner to the Constable, or, to be more formal and correct, he should send this order:—

NORTHERN DISTRICT, }
Island Cove,
to wit.

NEWFOUNDLAND.

22.

To the Keeper of the Gaol, at ———, in the said District.

WHEREAS on the — day of —, Job Stiggins, hereafter called the accused, was committed by me to your custody on a charge of larceny, as mentioned in my said Warrant, for a period of eight days, unless he should be otherwise ordered in the meantime; and whereas it appears to me, the undersigned Justice of the Peace for the said District, that it is expedient the said accused should be further examined before the expiration of the said remand: these are therefore to order you, in Her Majesty's name, to have the said accused at —, in the said District, before me or some other Justice of the said District, at — o'clock in the forenoon of (state day), to answer further to the said charge, and to be further dealt with according to Law

Given under my Hand and Seal, at Island Cove, aforesaid, this — day of —, in the year Eighteen Hundred and Seventy —.

T. WILLS, J. P., [L. S.]

23. We will suppose that Mr. Wills is satisfied that there is a sufficient case against Stiggins to commit him for trial, but that Stiggins can obtain Bail. Should it be a case in which the Magistrate would take Bail, (see various observations on Bail), and the Magistrate make up his mind to accept Bail; (in such a case as Stiggins' of course, if satisfactory Bail were forthcoming, Bail should be taken); the next thing to be done is to inform the prisoner that Bail will be taken, telling him the amount. Stiggins sends to his friends, either by the Constable or some one else, who come before the Magistrate, and if he is satisfied with

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them he then prepares the Recognizance of Bail in this Form :—

(FORM S 1.)

24.

NEWFOUNDLAND.

NORTHERN DISTRICT, } Be it remembered that on the — day
Island Cove, } of —, in the year Eighteen Hundred and
to wit. } Seventy —, Job Stiggins, of —, in the said

District, Fisherman, and —, of same place, Planter, and —, of same place, Fisherman, personally came before me, the undersigned Justice of the Peace for the said District, and severally acknowledged themselves to owe to Her Majesty the Queen the several sums following, that is to say, Job Stiggins, — dollars, (the two other sureties, generally half the prisoner's amount) the said —, and the said —, — dollars each, to be made and levied of their several goods and chattels, lands and tenements, respectively, to the use of Her Majesty, if the said Stiggins fail in the condition endorsed.

Taken and acknowledged the day and year }
first above mentioned at —, before me, }

T. WILLS, J. P.

25. The following is written on the back of the Recognizance of Bail :—

The condition of the within written Recognizance is such that whereas the said Job Stiggins was this day charged before me, the Justice within mentioned, for that he, the said Job Stiggins, on the fifth day of June, in the year Eighteen Hundred and Seventy —, at Island Cove, aforesaid, certain money, &c., (*and following out the charge as in Caption*) If therefore the said Job Stiggins will appear at the next term of the Supreme (a) Court of Newfoundland on the Northern Circuit, to be holden at Harbor Grace, in the District aforesaid, and there surrender himself into the custody of the Keeper of the Common Gaol there and plead to such indictment as may be found against him by the Grand Jury for and in respect of the charge aforesaid, and take his trial upon the same, and not depart the said Court without leave, then the said Recognizance to be void or else to stand in full force and virtue.

(a) When in St. John's ay, "at the next term of the Supreme Court of Newfoundland, to be holden at St. John's."

Proceedings in an Imaginary Case.

26. NOTICE OF RECOGNIZANCE to be given to Accused and his Bail. As soon as the Recognizance is completed the Justice should give to Stiggins and each of his Bail the following notice, and on the copies he should note the day when they were delivered to them :—

FORM (O 2.)

27. *Notice of the said Recognizance to be given to the Accused and his Bail.*

Take notice that you, Job Stiggins, of Island Cove, in the Northern District, — are bound in the sum of — dollars, and your Sureties, — of —, and — of — in the District aforesaid, —, in the sum of — dollars; that you the said — will appear on the first day of the next term of the Supreme Court on Circuit, to be holden at Harbor Grace, in the said Northern District, and there surrender yourself into the custody of the Keeper of the Common Gaol at —, aforesaid, and there plead to such indictment as may be found against you by the Grand Jury, for and in respect of the offence whereof you stand charged, and take your trial upon the same, and not depart the said Court without leave; and unless you, the said Job Stiggins, personally appear and plead and take your trial accordingly, the Recognizance entered into by you and your Sureties shall be forthwith levied on you and them.

Dated this — day of —, A. D. 187—.

T. WILLS, J. P.

The Justice of the Peace before whom
the said Recognizance was taken.

28. If Bail is not forthcoming for Stiggins, Mr. Wills will commit him to gaol; and as respects the gaol to which he will send the prisoner, he will be guided by the consideration of where he is to be tried; of course, if the crime was committed in the winter months, he would send the prisoner to Harbor Grace, that being the only place on the Northern Circuit where a term is held in May. Should a crime be committed either in the Northern or Southern Dis-

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tricts, the Justice will have to consider whether the Supreme Court on Circuit or the Supreme Court in St. John's could most conveniently dispose of the case, taking into consideration the obtaining of witnesses, their expenses, &c.; and where there is any doubt as to which is the best course to adopt, the Justice should communicate as soon as possible with the Attorney General, by whose instructions he will have to be guided; in all cases the Attorney General should be informed by the very first opportunity of a crime having been committed, and what has been done in the matter. We will suppose that in Stiggins' case, then, he is committed to Harbor Grace gaol. The Commitment will be in the following Form:—

FORM (T 1.)

29.

WARRANT OF COMMITMENT.

NEWFOUNDLAND.

NORTHERN DISTRICT, }
Island Cove,
 to wit. }

*To the Constable of ———, and the Keeper
 of the Gaol at Harbor Grace, in the said
 District.*

WHEREAS Job Stiggins, hereafter called the accused, was this day charged before me, Thomas Wills, one of Majesty's Justices of the Peace for the said District, on the oath of William Smith and others, for that, [*Here state the offence as in charge in Caption.*] These are, therefore, to command you, the said Constable, to take the said accused, and him safely convey to the said Gaol, and there to deliver him to the Keeper thereof, together with this Precept; and I do hereby command you, the said Keeper, to receive the said accused into your custody in the said

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Gaol, and there safely keep him until he shall be thence delivered by due course of Law. (a)

Given under my Hand and Seal, at Island Cove,
this — day of —, in the year 187—.

T. WILLS, J. P. [L. S.]

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UNDER JERVIS'S ACT, 11 & 12 VIC. CAP. 42, REFERRED TO IN
CHAPTERS 8 & 9.

(A.)

Information and Complaint for an Indictable Offence.

—DISTRICT, }
—to wit. }

NEWFOUNDLAND.

The information and complaint of C. D. of —, [*Fisherman*], taken this — day of — in the year of our Lord, 187—, before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said [*District*] of —, who saith that [*&c., stating the offence*]. (b)

Sworn before [*me*], the day and year }
first above mentioned, at —. }

J. S., J. P.

(Signed) C. D.

UNDLAND.

(B.)

Warrant to apprehend a Person Charged with an Indictable Offence.

—DISTRICT, }
—to wit. }

NEWFOUNDLAND.

To the Constable of —, and to all other Constables
in the said [*District*] of —.

Whereas A. B. of —, [*Fisherman*], hath this day been charged upon oath before the undersigned, [*one*] of Her Majesty's Justices of the

(a) It will be observed that no time is stated when prisoner is to be tried, and it has been noticed as a defect in this Form by English Text writers; but in the case of the Circuits no time can be fixed exactly beforehand when they will be held; it depends on the Proclamation and sometimes on the weather.

(b) If the offender is merely suspected to have committed the offence, insert after "saith," "he hath just cause to believe and suspect, and doth believe and suspect that."

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Peace in and for the said district of —, for that he, on — at — did, [*&c., stating shortly the offence*]: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before [*me*], or some other of Her Majesty's Justices of the Peace in and for the said [*District*], to answer unto the said charge, and be further dealt with according to law.

Given under my Hand and Seal, this — day
of —, in the year of our Lord —, at —,
in the [*District*] aforesaid.

J. S. (L. S.)

(C.)

Summons to a Person Charged with an Indictable Offence.

— District, }
— to wit. }

NEWFOUNDLAND.

To A. B., of —, [*Fisherman*].

Whereas you have this day been charged before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said [*District*] of —, for that you on —, at — [*&c., stating shortly the offence*]: These are therefore to command you, in Her Majesty's name, to be and appear before me on —, at — o'clock in the forenoon, at —, or before such other Justice of the Peace for the same [*District*] as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under my Hand and Seal this — day
of —, in the year of our Lord —, at —,
in the District aforesaid.

J. S. (L. S.)

(D.)

Warrant where the summons is Disobeyed.

To the Constables of —, and to all other Constables
in the said [*District*] of —.

Whereas on the — last past, A. B., of —, [*Fisherman*], was charged before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said [*District*] of —, for that [*&c., as in the Summons*]: And whereas (*I*) then issued (*my*) Summons to the said A. B., commanding him in Her Majesty's name, to be and appear before (*me*)

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on —, at — o'clock in the forenoon, at —, or before such other Justice of the Peace for the same (*District*) as might then be there, to answer to the said charge, and to be further dealt with according to law: And whereas the said A.B. hath neglected to be or appear at the time and place appointed in and by the said Summons, although it hath now been proved to me upon oath that the said Summons was duly served upon the said A.B.: There are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A.B., and to bring him before me, or some other of Her Majesty's Justices of the Peace in and for the said (*District*), to answer to the said charge, and to be further dealt with according to law.

Given under my Hand and Seal, this — day
of —, in the year of Our Lord —, at
—, in the District aforesaid.

J. S. (l. s.)

(E.)

*Warrant to apprehend a Person Charged with an Indictable Offence
Committed on the High Seas or Abroad.*

For offences committed on the high seas the Warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas, out of this Colony and within the jurisdiction of the Admiralty of England."

(F.)

Certificate of Indictment being found.

I hereby certify, that in the Supreme Court of Newfoundland (or the Supreme Court of Newfoundland on the — Circuit at —, or a Court of General Quarter Sessions of the Peace, holden at —, in the said (*Island*)), on — a bill of indictment was found by the Grand Jury against A.B., therein described as A.B., late of — (*laborer*), for that he (&c., *stating shortly the offence*), and that the said A.B. hath not appeared or pleaded to the said indictment.

Dated this — day of —, 187—.

J. D.

C. C. & Reg., or C. Supreme Court on the —
Circuit, &c., or Clerk of the Peace at —.

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(G.)

Warrant to apprehend a Person indicted.

To the Constable of —, and to all other Constables
in the said (*District*) of — in Newfoundland.

Whereas it hath been duly certified by J. D., C. C. & Reg., &c., or Clerk of the Peace at — in the said Island (that &c., *stating the Certificate*): These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*), or some other Justice of the Peace in and for the said (*District*), to be dealt with according to law.

Given under my Hand and Seal, this — day
of — in the year of our Lord —, at —,
in the [*District*] aforesaid.

J. S. [L. s.]

(H.)

Warrant of Commitment of a Person Indicted.

— DISTRICT, }
— to wit. }

NEWFOUNDLAND.

To the Constable of — and to the Keeper of the
Gaol, at —, in the said (*District*) of —,

Whereas by (*my*) warrant, dated the — day of —, after reciting that it had been certified by J. D. (&c., *as in the certificate*) (*I*) commanded the Constable of —, and all other Constables of the said District, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before [*me*], the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said [*District*], or before some other Justice of the Peace in and for the said [*District*], to be dealt with according to law: And whereas the said A. B. hath been apprehended under and by virtue of the said warrant, and being now brought before [*me*], it is hereupon duly proved to [*me*] upon oath, that the said A. B. is the same person who is named and charged in and by the said indictment: These are therefore to command you, the Constable, in Her Majesty's name, forthwith to take and safely convey the said A. B. to the said [*Gaol*] at — in the said [*District*], and there to deliver him to the Keeper thereof, together with this precept: And I hereby command you the said Keeper to receive the said A. B. into your custody in the said Gaol, and him there safely to keep until he shall be thence delivered by due course of law.

Given under my Hand and Seal, this —
day of —, in the year of our Lord
—, at —, in the District aforesaid.

J. S. [L. s.]

Appendix of Forms.

(I.)

Warrant to detain a Person Indicted who is already in Custody for another Offence.

— DISTRICT, }
— to wit. }

NEWFOUNDLAND.

To the Keeper of the Gaol at —, in the said
District or —.

Whereas it hath been duly certified by J. D., C. C. & Reg., &c., or Clerk of the Peace at —, that [&c., stating the certificate]: And whereas [I am] informed that the said A. B. is in your custody in the said Gaol at — aforesaid, charged with some offence or other matter; and it being now duly proved upon oath before [me] that the said A. B. so indicted as aforesaid, and the said A. B. in your custody as aforesaid, are one and the same person: These are therefore to command you, in Her Majesty's name, to detain the said A. B. in your custody in the Gaol aforesaid, until by Her Majesty's Writ of Habeas Corpus he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under my Hand and Seal, this —
day of —, in the year of our Lord —,
at —, in the District aforesaid.

J. S. [L. S.]

FORM (K.) given at page 395.

(L. 1.)

Summons of a Witness.

To E. F., of —, *Fisherman.*

Whereas information hath been laid before the undersigned [one] of Her Majesty's Justices of the Peace in and for the said [District] of —, that A. B. [&c., as in the Summons or Warrant against the accused], and it hath been made to appear to me [upon oath if so, though it is not necessary that this information should be given on oath.] that you are likely to give material evidence for the prosecution: These are therefore to require you to be and to appear before me on — next, at — o'clock in the forenoon, at —, or before such other Justice of the Peace

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for the same District as may then be there, to testify what you shall know concerning, the said charge so made against the said A. B., as aforesaid. Herein fail not.

Given under my Hand and Seal, this — day
of —, in the year of our Lord —, at
—, in the District aforesaid.

J. S. [L. S.]

(L. 2.)

Warrant where a Witness has not Obeyed a Summons.

To the Constable of —, and to all other Constables in
the said District of —, in Newfoundland.

Whereas information having been laid before the undersigned, one of Her Majesty's Justices of the Peace in and for the said District of —, that A. B., [*&c., as in the Summons*]; and it having been made to appear to me upon oath that E. F., of —, [*Fisherman*] was likely to give material evidence for the prosecution, I did duly issue my Summons to the said E. F., requiring him to be and appear before me on — at —, or before such other Justice or Justices of the Peace for the same District as might then be there, to testify what he should know respecting the said charge so made against the said A. B., as aforesaid: And whereas proof hath this day been made before me upon oath of such Summons having been duly served upon the said E. F. And whereas the said E. F. hath neglected to appear at the time and place appointed by the said Summons, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F. before me on —, at — o'clock in the forenoon, at —, or before such other Justice of the Peace for the same District as may then be there, to testify what he shall know concerning the said charge so made against the said A. B., as aforesaid.

Given under my Hand and Seal, this — day
of —, in the year of our Lord —, at
—, in the District aforesaid.

J. S. [L. S.]

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(L. 3.)

Warrant for a Witness in the first Instance.

To the Constable of —, and to all other Constables,
in the said District of —.

Whereas information hath been laid before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said [District] of —, that [&c., as in Summons]; and it having been made to appear to [me] upon oath, that E. F., of —, [Fisherman] is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence without being compelled so to do: These are therefore to command you to bring and have the said E. F. before me on —, at — o'clock in the forenoon, at —, or before such other Justice of the Peace for the same [District] as may then be there, to testify what he shall know concerning the said charge so made against the said A. B., as aforesaid.

Given under my Hand and Seal, this — day
of —, in the year of our Lord —, at
—, in the District aforesaid.

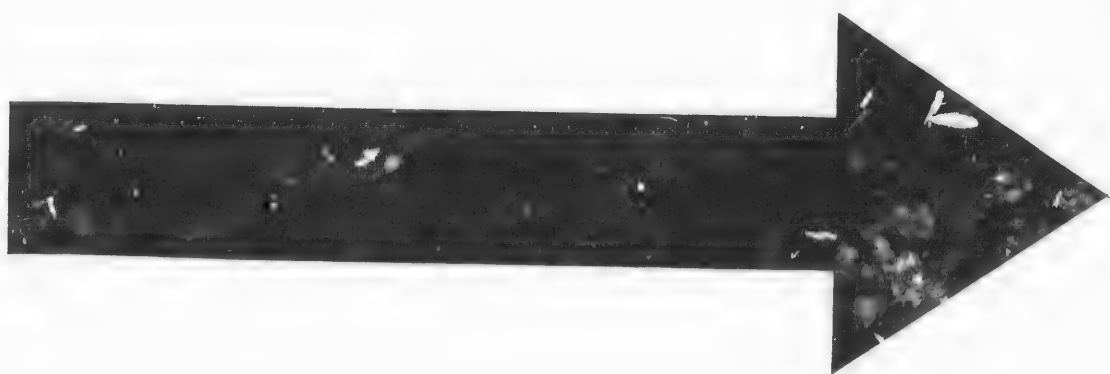
J. S. [L. S.]

(L. 4.)

Warrant of Commitment of a Witness for refusing to be sworn or to give Evidence.

To the Constable of —, and to the Keeper of
the Gaol at —, in the said District of —,
in Newfoundland.

Whereas A. B. was lately charged before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said [District] of —, for that [&c., as in the Summons]; and it having been made to appear to [me] upon oath, that E. F., of —, [hereafter called the witness] was likely to give material evidence for the prosecution, I duly issued my Summons to the said witness, requiring him to be and appear before me on —, at —, or before such other Justice of the Peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B., as aforesaid; and the said witness now appearing before me for being brought before me by virtue of a Warrant in that behalf, to testify as aforesaid, and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do [or



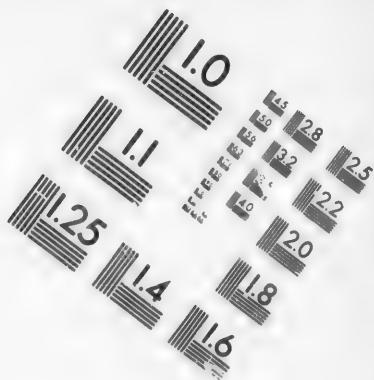
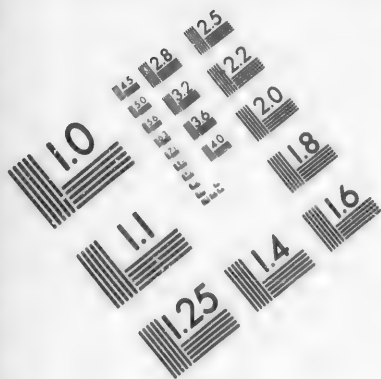
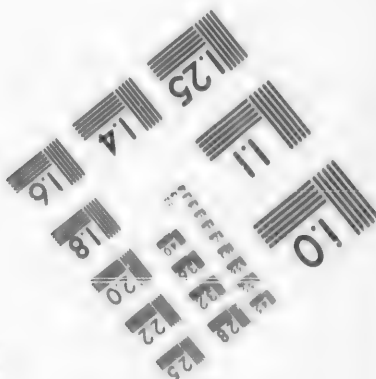
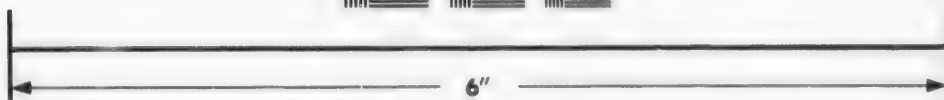
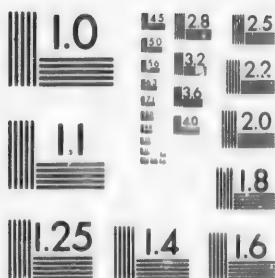


IMAGE EVALUATION TEST TARGET (MT-3)



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23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4303

15 28 25
32 22
20

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being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are here put to him], without offering any just excuse for such his refusal: These are therefore to command you the said Constable to take the said witness and him safely to convey to the said Gaol at —, and there deliver him the said Keeper thereof, together with this precept; and I do hereby command you the said Keeper to receive the said witness into your custody in the said Gaol, and him there safely keep for the space of — days, for his said contempt, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my Hand and Seal, this — day
of —, in the year of our Lord —, at
—, in the District aforesaid.

J. S. [L. S.]

(M.)

Depositions of Witnesses, given at page 433.

(N.)

Statement of the Accused, given at page 437.

(O. 1.)

Recognizance to Prosecute or give Evidence.

NEWFOUNDLAND.

— District, } Be it remembered, that on the — day of —, in the
— to wit. } year of our Lord —, C. D., of —, in the said District, Fisherman, personally came before me, one of Her Majesty's Justices of the Peace for the said District, and acknowledged himself to owe to our Sovereign Lady the Queen the sum of — dollars, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, Her Heirs and Successors, if the said C. D. shall fail in the condition indorsed.

Taken and acknowledged the day and year }
first above mentioned at —, before me, }

J. S.

*Appendix of Forms.**Condition to Prosecute.*

The condition of the within written recognizance is such, that whereas one A. B. was this day charged before me, J. S., Justice of the Peace within mentioned, for that [&c., as in the caption of the depositions;] if therefore he the said C. D. shall appear at the next sitting of the Supreme Court of Newfoundland, in St. John's, or at the next sitting of the Supreme Court of Newfoundland on the — Circuit at —, [or at the next Court of General Quarter Sessions of the Peace] to be holden at —, and there prefer or cause to be preferred a bill of indictment for the offence aforesaid against the said A. B., and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

Condition to Prosecute and give Evidence.

Same as the last form to the asterisk*, and then thus:—"and there prefer or cause to be preferred a bill of indictment against the said A. B. for the offence aforesaid, and duly prosecute such indictment, and give evidence thereon, as well to the jurors who shall then inquire of the said offence as also to them who shall pass upon the trial of the said A. B.; then the said recognizance to be void, or else to stand in full force and virtue."

Condition to give Evidence.

Same as the last form but one, to the asterisk*, and then thus:—"and there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said A. B. for the offence aforesaid, as well to the jurors who shall there inquire of the said offence as also to the jurors who shall pass upon the trial of the said A. B. if the said bill shall be found a true bill; then the said recognizance to be void, or else to stand in full force and virtue."

(O. 2.)

Notice of the said Recognizance to be given to the Prosecutor and his Witnesses

Take notice that you, C. D., of —, are bound in the sum to wit. } of — dollars to appear at the next sitting of — Court at —, in Newfoundland, and then and there [prosecute and] give evidence

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against A.B.; and unless you then appear there, and [prosecute and] give evidence accordingly, the recognizance entered into by you will be forthwith levied on you.

Dated this — day of —, 187—.

J. S.

(P. 1.)

Commitment of Witness for refusing to enter into the Recognizance.

NEWFOUNDLAND.

— DISTRICT, }
— to wit. }

To the Constables of — and to the Keeper of the Gaol, at —, in the said District of —.

Whereas A.B. was lately charged before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said [District] of —, for that [etc., as in the Summons to the witness], and it having been made to appear to [me], upon oath that E.F., of —, was likely to give material evidence for the prosecution, [I] duly issued [my summons to the said E. F., requiring him to be and appear] before [me] on —, at —, or before such other Justice of the Peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B., as aforesaid; and the said E. F. now appearing before [me], or being brought before [me] by virtue of a warrant in that behalf, to testify as aforesaid, hath been now examined by [me] touching the premises, but being by [me] required to enter into a recognizance conditioned to give evidence against the said A. B. hath now refused so to do: These are therefore to command you the said Constable to take the said E. F., and him safely to convey to the said Gaol, at —, in the District aforesaid, and there deliver him to the said Keeper thereof, together with this precept; and I do hereby command you the said Keeper to receive the said E. F. into your custody in the said Gaol, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime such E. F. shall duly enter into such recognizance as aforesaid in the sum of — dollars before some one Justice of the Peace for the said District, conditioned in the usual form to appear at the next sitting of the Supreme Court of Newfoundland, at St. John's, (or at the next sitting of the Supreme Court on Circuit at —, or General Quarter Sessions of the Peace, to be holden at —,) and there to give evidence before the Grand

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Jury upon any bill of indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a true bill should be found against him for the same.

Given under my Hand and Seal, this — day
of —, in the year of our Lord —, at
—, in the District aforesaid.

(P. 2.)

Subsequent Order to Discharge the Witness.

To the Keeper of the Gaol at —, in the District
of —, Newfoundland.

Whereas by [my] order dated the — day of —, instant, reciting that A. B. was lately before me, charged before [me] for a certain offence therein mentioned, and that E. F. having appeared before [me] and being examined as a witness for the prosecution in that behalf, refused to enter into a recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid: And whereas, for want of sufficient evidence against the said A. B., the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody: There are therefore to order and direct you the said Keeper to discharge the said E. F. out of your custody as to the said commitment, and suffer him to go at large.

Given under my Hand and Seal, this —
day of —, in the year of our Lord —,
at —, in the District aforesaid.

J. S. (L. S.)

(Q. 2.)

Recognizance of Bail instead of Remand, on an Adjournment of Examination.

Follow the Form (S. 1.) page 442, and then endorse this condition on it.

Condition.

The condition of the within written recognizance is such, that whereas the within-bounden A. B. was this day (or on — last past)

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charged before me, for that (&c., as in the warrant): And whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the — day of —, instant; if therefore the said A. B. shall appear before me on the said — day of —, instant, at — o'clock in the forenoon, or before such other Justice of Peace for the said District as may then be there, to answer further to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

(Q. 3.)

Notice of such Recognizance to be given to the Accused and his Sureties.

—DISTRICT, }
—to wit. }

NEWFOUNDLAND.

Take notice, that you A. B., of —, are bound in the sum of —, and your sureties L. M. and N. O. in the sum of — each, that you A. B. appear before me J. S., one of Her Majesty's Justices of the Peace for the District of —, on —, the — day of —, instant, at — o'clock in the forenoon, at —, or before such other Justice of the Peace for the same District as may then be there, to answer further to the charge made against you by C. D., and to be further dealt with according to law; and unless you, A. B., personally appear accordingly, the recognizances entered into by yourself and sureties will be forthwith levied on you and them.

Dated this — day of —, 187—.

J. S.

(Q. 4.)

(a) Certificate of Non-appearance to be endorsed in the Recognizance.

I hereby certify to the Supreme Court of Newfoundland that the said A. B. hath not appeared at the time and place in the above condition mentioned, but therein hath made default, by reason whereof the within written recognizance is forfeited.

J. S.

(a) This is the Form to be observed when the Recognizance is to appear in the Supreme Court, either in St. John's or on Circuit. Form given at page 417. is when the Recognizance is to appear before the Justice or Quarter Sessions.

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(R. 1.)

Warrant to convey the Accused before a Justice of the District, &c., in which the Offence was committed.

To W. T., Constable of —, and to all other Constables in the said District of —, Newfoundland.

Whereas A. B., of —, labourer hath this day been charged before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District of —, for that (&c., as in the warrant to apprehend): And whereas (I) have taken the deposition of C. D., a witness examined by (me) in this behalf; but inasmuch as (I) am informed that the principal witnesses to prove the said offence against the said A. B. reside in the District of —, where the said offence is alleged to have been committed. These are therefore to command you, the said Constable, in Her Majesty's name, forthwith to take and convey the said A. B. to the said District of —, and there carry him before some Justice of the Peace in and for that District, and near unto where the offence is alleged to have been committed, to answer further to the said charge before him, and to be further dealt with according to law; and (I) hereby further command you the said Constable to deliver to the said Justice the information in this behalf, and also the said deposition of C. D. now given into your possession for that purpose, together with this precept.

Given under my Hand and Seal this — day
of —, in the year of our Lord —, at
—, in the District aforesaid.

J. S.

J. S. (L. S.)

FORM (S 1.) given at page 442.

Recognizance of Bail.

FORMS (S. 3 & 4) not used.

(S. 5.)

Warrant of Delivrance on Bail being given for a Prisoner already Committed.

To the Keeper of the Gaol at —, in the said District
of —, in Newfoundland.

Whereas A. B., late of —, Fisherman, hath before me, one of Her Majesty's Justices of the Peace in and for the said District, entered into

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his own recognizance, and found sufficient sureties for his appearance at the next term of the Supreme Court or of the Supreme Court on the — Circuit, to be holden at —, (or Court of General Quarter Sessions of the Peace) at —, to answer our Sovereign Lady the Queen, for that (&c., as in the commitment), for which he was taken and committed to your said Gaol: These are therefore to command you, in Her Majesty's name, that if the said A. B. do remain in your custody in the said Gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under my Hand and Seal, this — day
of —, in the year of our Lord —, at
—, in the District aforesaid.

J. S. [L. s.]

(T. I.)

Warrant of Commitment given at page 444.

**Various Forms Not Given in the Appendix to
Jervis's Act.**

*Mode of describing, technically, different descriptions of
Property.*

LIVE ANIMALS.—one horse ;

One tame duck.

DEAD ANIMALS.—One dead fowl.

BANK NOTE.—One Bank note for the payment and of
the value of — dollars.

MONEY.—Certain money to the amount of — dol-
lars, or the sum of — dollars in money.

PAIRS OF ARTICLES.—Three pairs of shoes.

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HEAVY ARTICLES.—(Weight.)—— pounds and the
half of another pound weight
of flour, of the goods, &c.,
of ——.

ARTICLES.—(Capacity.)—One gallon of molasses.
“ —(Length.)—Ten yards and the half of an-
other yard of calico, &c.

Mode of Describing Owner's Property :

PARTNERSHIP PROPERTY.—Property belonging to a firm,
such as Baine, Johnston &
Co., would be described as
“the property of Walter
Baine Grieve and others.”

PERSON UNKNOWN,—A certain person whose name is
unknown.

SINGLE WOMAN SINCE MARRIED.—Mary Smith, now
Mary Jones.

A PERSON DECEASED BEFORE ADMINISTRATION GRANTED—
The property of John Smith, since deceased.

Memorandum to be written on Documents produced in Evidence.

This is the plan, (or as the case may be) produced to me, the under-
signed Justice of the Peace for the — District of Newfoundland, on
the examination of A. B., charged with (arson, forgery, &c.,) and refer-
red to in the examination of C. D., touching the said charge.

Taken before me, this — day of —, 187—.

T. WILLS, J. P.

*Deposition of Witness dangerously ill and unable to travel, (referred to
in page 426.)*

— DISTRICT, }
— to wit. }

NEWFOUNDLAND.

The examination and deposition of L. M., of —, in the said Dis-
trict, Fisherman, taken on oath this — day of —, in the year —.

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at —, in the said District, before the undersigned, one of Her Majesty's Justices of the Peace for the said District, pursuant to Section 6 of the Imperial Act of the 30th and 31st years of Her Majesty, Chapter 35, intitled "An Act to remove some defects in the administration of the Criminal Law," it having been made to appear to my satisfaction that the said L. M. is dangerously ill, and unable to travel, and in the opinion of E. F., (*a registered Medical Practitioner are the words of the Act, but any medical man holding a medical diploma recognized by Law in England, Scotland, or Ireland, would satisfy the Act*) not likely to recover from such illness, and it not being practicable for a Justice of the Peace to take an examination or deposition of the said L. M., in accordance with the provisions of the Act 11 & 12 Victoria, Chapter 42, in the presence and hearing of A. B., (the accused) and of the said E. F.,* and —, (the said accused having been committed or bailed to appear for trial in the next Supreme Court, or Supreme Court on the — Circuit, or Quarter Sessions, at —, to answer to a charge of having on &c., at, &c., stating the offence shortly) [or if no person charged, say from the asterisk*, relating to a certain indictable offence, namely, the offence of —, stating it shortly, alleged to have been committed on, &c., at, &c., for which no person has already been accused, (or committed, or bailed), to appear for trial]. This deponent, L. M., on his oath, saith as follows, &c.

L. M.

The above deposition of L. M., was taken and }
 sworn before me, at —, on the day and }
 year first above mentioned.

J. S., J. P.

Notice of Intention to take Deposition of Witness Ill.

To A. B., (the accused or the prosecutor,) I, C. D., of &c., Constable of —, being the prosecutor of you, the said A. B., (or being the person accused of the offence of —,) hereby give you notice, pursuant to the Imperial Statute, 30 & 31 Victoria, Chapter 35, Section 6, that J. S., one of Her Majesty's Justices of the Peace for the — District of Newfoundland, intends, on the — day of —, at —, in the said District, to take the statement of L. M., who is there dangerously ill, and unable to travel, and who it is alleged is able and willing to give material information relating to the offence with which you were charged on the —

INSECTS.

Colorado Beetles (see page 175, Destructive Insects).

INSOLVENCY

IN the following pages I have put together the portions of the Insolvency Laws which come under the jurisdiction of Stipendiary Magistrates. These relate to the preferential claims of fishery servants, sharemen, seaiers, &c. In all cases sharemen, and every fishery servant, should insist on having a written agreement with their employer, and such agreement should be signed in the supplying merchant's office. It is the only safe course to follow. It is not, however, necessary to prove that the supplier or receiver of the voyage knew the actual names of the servants or sharemen; it is sufficient to prove that he was aware that the hirer employed so many servants, or had so many sharemen, or that in carrying on his business such a number of servants and sharemen were usual and necessary—of course the magistrate will always satisfy himself that the claims of the servants or sharemen as such are honest, *bona fide* claims:—

FISHERY SERVANTS—PRIVILEGED CREDITORS—RECEIVER OF THE VOYAGE—DISTRIBUTION OF ESTATE.

1. When it shall be made to appear that the hirer or employer of any seaman, fisherman or other servant is insolvent or unable to pay his creditors one hundred cents in the dollar, such seaman, fisherman or other servant actually employed in catching, curing of fish or oil, and such person as shall have supplied bait to the hirer or employer

aforesaid, and who shall be creditors for wages, shares or bait for the current season, shall upon all such fish and oil taken, cured or made by the hirer or employer aforesaid, or out of the produce or value thereof, if the same be in the possession of the hirer or employer, or of any other person aware of or privy to the hiring or employing of any such seaman, fisherman or other servant, or having notice of the claim of such seaman, fisherman or other servant, whether the same be accruing or due at or before the time of such other person receiving such fish or oil or the produce or value thereof, or before paying the hirer or employer for the same, be considered privileged creditors, and shall first be paid one hundred cents in the dollar, so far as such fish or oil, or the produce or value thereof, shall go.

2. Where such fish and oil shall be insufficient for the full payment of the wages or shares of all such seamen, fishermen, or other servants, or of the persons who shall supply bait as aforesaid, they shall be paid their claims rateably in proportion to their respective wages, shares or bait money.

3. In the case of the supplying merchant, no seamen, fishermen or other servants than those engaged with the knowledge and consent of such supplying merchant, being a receiver, shall be privileged creditors in manner aforesaid, in regard to any supplying merchant, being such receiver, nor in regard to the fish or oil, or the produce or value thereof, in the hands of such receiver.

4. Any person who may be *bona fide* engaged or shipped in the place of any such seaman, fisherman or other

servant who may during the voyage have been discharged, or have left, or deserted, or have died, or have been incapacitated by illness or other cause from continuing his service, shall be a privileged creditor in manner aforesaid, and shall be entitled to claim on the supplying merchant, being such receiver, for the period he may have served in such stead.

5. Any defence which the hirer or employer could have made if the action had been taken against him by such seaman, fisherman or other servant, or supplier of bait, for such wages, share or bait money, shall be equally available for the receiver to make on the trial of any action brought against him by such seaman, fisherman or other servant or supplier of bait, for such wages, share or bait money, or the value of such fish and oil, or any part thereof as aforesaid: Provided that the receiver of the voyage, or any part of the produce or value of the same, shall not be liable for the payment of the wages or share of such seaman, fisherman or other servant or supplier of bait, or any part thereof, unless it be proven on the trial that such receiver is liable under the provisions of this chapter: Provided that any shareman selling or lawfully disposing of his share of fish or oil, or any part thereof, may sue and recover payment for same from the purchaser thereof, according to the terms of his contract, before any stipendiary Justice or Court; and any shareman, fisherman or other servant may in like manner sue for and recover his wages or share from his hirer or employer, notwithstanding the provisions of this chapter. (1)

(1) The preferential claim is only for the balance due after deducting the servant's account. The receiver can set up any defence such as neglect or dishonesty on the part of the servant, the same as the hirer might have done.

6. To enable such seaman, fisherman or servant, or person supplying bait as aforesaid, to recover the amount of his wages, share or bait money from the receiver of such fish and oil, or the produce or value thereof, it shall not be necessary that the hirer or employer should have been formally declared insolvent; (2) but it will be sufficient if it be made to appear on the trial of any action which such seaman, fisherman or other servant or supplier of bait may bring for money had and received, or for wages, against the said receiver, before any stipendiary Justice, Court of Sessions or other Court that the share, wages or bait money was due at the time of bringing such action, and that the said hirer or employer was then insolvent or unable to pay his creditors one hundred cents in the dollar.

7. If such seaman, fisherman, or other servant, or supplier of bait, has knowingly or wilfully colluded with or assisted the hirer or employer in disposing of his voyage otherwise than to his supplying merchant, such supplying merchant not being paid to the extent of his supplies over and above the unpaid wages or bait money at the time of the action being brought, such seaman, fisherman or other servant or supplier of bait, shall not be entitled to recover in any action brought against any receiver, being a supplying merchant.

(a) The usual practice is to put the employer in the witness box and to question him as to whether he is able to pay one hundred cents to the dollar. His uncontradicted testimony that he is insolvent is usually accepted. The supplying merchant or receiver, however, as the defendant in the action, can produce evidence to show that he is solvent, or has made away with the voyage. If fraud of this kind is proved, and that the servants were parties to it, and profited by it, their claims should be rigidly enquired into, and every effort should be made by the Magistrate to arrive at the facts. If necessary he can adjourn the case to procure further evidence.

8. Nothing herein contained shall prevent such seaman, fisherman or other servant, from recovering such share or wages from any person other than the supplying merchant who may have received such wage or any part thereof, and who would be otherwise liable under this chapter.

9. Sealers who have put in or sold their shares of seals' pelts, skins or oil to the owners or outfitters of sealing ships, shall, in like manner with servants, under section one, be preferential creditors upon the estates of such owners or outfitters, in the event of their insolvency. Sealers who have sold their shares of seals' pelts, skins or oil, to a vendee other than the owners or outfitters, aforesaid, shall rank in like manner upon the estate of such vendee in the event of his insolvency. In the cases provided for by this section, the seals' pelts, skins or oil, for which the preferable claim is given, must have been delivered to the owner, outfitter, or other vendee, within six months prior to the declaration of insolvency. Nothing in this section contained shall entitle sealers to claim for their share of seals' pelts, skins or oil, to which, according to the terms of their agreements, they may have forfeited their right; and in such case the persons entitled to the forfeiture shall be entitled to claim as aforesaid, in their stead. Nothing in this section contained shall be construed to affect any custom as to set-off against shares of seals' pelts, skins or oil, of hirers' or employers' account.

10. The estates of persons declared insolvent shall, after the payment of costs and expenses, be distributed rateably amongst the creditors, except in the cases herein provided for.

11. In the distribution of the estate of any person declared insolvent, all wages earned by clerks and servants at any time within one year prior to the appointment of a trustee in insolvency, and also in the event of any receiver or supplying merchant being declared insolvent, any seaman, fisherman or other servant, or supplier of bait, as aforesaid, who may be a privileged creditor under the first section of this chapter, to the extent of his rateable proportion, as aforesaid, of the fish or oil, or the produce or value thereof, shall be privileged creditors, and shall be co-equally entitled to recover and receive one hundred cents in the dollar out of the estate and effects of the person declared insolvent. Any person who, but for a wrongful dismissal from service, would have been entitled to claim preferentially, and who shall obtain judgment for damages in any action for wrongful dismissal, within one year before the appointment of a trustee in insolvency, or who, not having obtained such judgment before the appointment of such trustee, shall prove his claim for damages in such a manner as the Court or Judge shall direct, shall be entitled to claim preferentially for such damages, not exceeding one year's wages, and in the same manner as if such damages were wages actually earned.

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SECTION

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INTOXICATING LIQUORS—SALE OF.

The law on this important subject, corrected and consolidated up to 1895, will be found in the following pages. The object of these Acts are two-fold. First, to regulate the sale in licensed houses. Secondly, to prevent by all means the traffic in unlicensed houses. Even with the extensive powers conferred on the Magistrates and Police, shebeens still flourish; all lawful means should be used to root them out. The carrying out of the law justly, vigorously, and above all impartially, is one of the Magistrate's most important duties, and one in which he renders the most valuable service to the moral welfare of the community in which he resides.

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1. Construction.
2. Penalty for sale without license.
3. Bavarian beer and Botanic beer intoxicating liquors.
4. Licenses may be granted by Magistrates; Proviso on refusal; Magistrates to make rules, &c.
5. Licenses—wholesale and retail.
6. Licenses—forms of; Proviso; Licensing days.
7. Fees on Licenses.
8. Payment of license; Bonds.
9. Occupier to be licensed.
10. Registry by Clerk of Peace or Magistrate; Licensed persons, list of.
11. Wholesale license—less than two gallons not to be sold; not to be drunk on premises; penalty.
12. Name of licensed party, &c., to be painted over outer door; penalty for non-compliance.
13. Penalty for exhibiting signs, &c., by persons not licensed.
14. Penalty for adulteration.
15. Penalty for possession of adulterations.

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16. Constables may enter, &c., and take samples.
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19. Habitual drunkards—Magistrate may prohibit sale to: penalty for supplying after notice.
20. Sale or pawn of goods for liquor; restitution and penalty.
21. Recovery or set-off for liquor; securities for, void.
22. Close of licensed houses; penalty for non-compliance.
23. Penalty for presence on premises after hours.
24. Penalty for games, disorderly conduct, sale to drunken persons, &c.
25. Harboring constables—penalty for.
26. Power of person licensed; penalty for refusal to quit.
27. Power of Justices to close houses; penalty.
28. Constables to visit unlicensed houses; penalty for interruption.

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29. Constables to seize liquor of persons selling without license; proceedings thereon.
30. Indemnity to constable.
31. Penalty for offences not specified.
32. License may be granted for short periods.
33. Liquor not to be carried in fishing or trading vessels; exception; ship's stores; forfeiture; penalty.
34. Search of boats.
35. Prosecutions to be commenced within six months; triable under 11 and 12 Vict., Cap. 43 (Imperial); imprisonment.
36. Nature of proof required.
37. Use of bottles, &c., or persons drinking or drunk, sufficient *prima facie* case.
38. Burden of proof: judgment may go notwithstanding variance; proviso for surprise.

SECTION

39. Act of wife, &c., presumptively act of husband, &c.
40. Appeal to Supreme Court; conditions.
41. Appeal, a stay of proceedings; record to be transmitted; hearing.
42. Conviction not to be quashed for want of form.
43. Licenses may be forfeited.
44. Liability of married women, &c.
45. Appropriations of fines.
46. This chapter to apply to Labrador; exceptions.
47. Granting of licenses for Labrador.
48. Requisites of application.
49. Fees.
50. Selling liquor afloat.
51. Selling to Esquimaux.
52. Jurisdiction.

Schedules.

1. The term "Intoxicating Liquor" in the "License Act, 1875," and the Acts in amendment thereof, shall be construed to signify spirits, wine, ale, beer, porter, and any fermented, distilled, spirituous or other liquor, containing two per cent. or upwards of alcohol by volume.

2. No intoxicating liquor shall be sold unless by license under a penalty not exceeding fifty dollars for the first offence, one hundred dollars for the second offence, and two hundred dollars for a third or any subsequent offence; and in default of payment, of imprisonment for any term not exceeding one month for the first offence, three months for the second offence, and six months for a third or subsequent offence, with or without hard labor. (1)

(1) The summons for selling without a license should state a breach of this section, taken from the Intoxicating Liquor amendment act (1895. See also form of summons).

Intoxicating Liquors.

3. The articles or beverages known as Bavarian beer or botanic beer are hereby declared to be intoxicating liquor.

4. Licenses may be granted by the Stipendiary Magistrates to such persons resident within their jurisdiction as shall be approved of by them. Provided, that where a license is refused by such Magistrates, the Governor in Council, on good and sufficient reasons being shown, may order the said license to be granted. The said Magistrates may make rules respecting the application for and modes of granting licenses in accordance with the provisions of this chapter, and may revoke, alter, and amend the same from time to time, subject to the approval of the Governor in Council, and the same when duly and finally sanctioned by the Governor in Council, and published in the *Royal Gazette*, shall be deemed to be incorporated in and form part of this chapter, and shall have the force and effect of law. (1)

5. Licenses shall be of two kinds, wholesale and retail licenses.

6. All licenses shall be in the forms in Schedule A. and shall be held on the terms and conditions in such forms mentioned, and shall continue for one year from the date thereof. Provided that whenever, by rules made under the fourth section of this chapter, the magistrate shall fix a

(1) A copy of the rules under this section made in St. John's will be found in the Appendix; they should be adopted all over the colony. Much trouble is saved to the Magistrate by having a fixed time for granting licenses. It is the general rule all over the British Empire.

Intoxicating Liquors.

certain day or days in the year for the granting of licenses, the licensing magistrate may, in the case of any licenses existing at the time of the making of such rules and expiring before any of the said licensing days, grant to the holder thereof a license, to continue and be in force till the next regular licensing day, at a charge in proportion to the annual charge for such license, and subject in all other respects to the provisions of this chapter in relation to annual licenses.

7. The charge for such licenses shall be as follows:— For the wholesale license, one hundred dollars; retail license, not more than seventy dollars nor less than ten dollars. The amount shall be in the discretion of the magistrates granting such retail license, and be regulated according to the situation of the licensed premises and their annual value for the purposes of such licenses.

8. Every person to whom a retail license shall be granted shall, before receiving the same, pay the license money for one year, and enter into a bond with two approved sureties in the form in Schedule B, which bond will be prepared by the Clerk of the Peace, or by the Magistrate where there shall be no Clerk of the Peace, and when executed shall be filed by the Clerk of the Peace or Magistrate.

9. No retail license shall be granted to anyone but the occupier of the premises on which the said intoxicating liquors shall be sold, exposed or offered for sale; but in case of the death or insolvency of the person licensed, a Magistrate may make such order thereon as shall suit the circumstances of such case.

10. The Clerk of the Peace in every district, and where there is no Clerk of the Peace, the Magistrate, shall register in a book a list of licenses with the dates thereof, the names, additions and residences of the parties licensed, and a memorandum of the houses or shops for which the licenses are granted, and of the bonds taken, and the license money, and fines and penalties paid; and shall make returns, embracing the foregoing particulars, at the end of each quarter to the Receiver General, and pay to him the amounts collected less the commission to be allowed on the license money, under a penalty of not exceeding one hundred dollars; and the list of persons so licensed, with their places of residence, shall be published half-yearly in the *Royal Gazette*.

11. No person holding a wholesale license shall sell, barter, or exchange less than two gallons of intoxicating liquors at any one time, and no part of such intoxicating liquors shall be drunk on the premises where the same shall have been sold; and any person who shall violate the conditions of his said wholesale license, or the provisions of this chapter in respect of such wholesale license, shall forfeit and pay a sum not exceeding one hundred dollars, with the costs, to be recovered and appropriated as hereinafter mentioned.

12. Every person holding a retail license shall, within ten days after obtaining the same, cause to be painted in letters publicly visible and legible upon a board to be placed over the outer door of the house or premises in which the said intoxicating liquors are sold by retail, the christian and surname of the person mentioned in such

license at full length, together with the words "Licensed to sell ale, wines and spirituous liquors"; and such person shall preserve and keep up such name and words, so painted as aforesaid, during all the time that such person shall continue so licensed; and every person in any respect making default herein shall forfeit and pay for every offence a sum not exceeding twenty-five dollars, and the neglect to do so for every ten days after every conviction, shall be deemed a fresh offence.

13. If any person without a retail license shall keep up or exhibit, in, about or near any house, outhouse or building, any sign-board or sign containing any words, or shall show any emblem or sign used or intended or calculated to intimate that any intoxicating liquors are for sale, barter, or traffic therein, or on the premises, the owner or occupier thereof, knowingly or wilfully offending herein, shall be subject to a fine not exceeding fifty dollars.

14. Every person who mixes, or causes to be mixed, with any intoxicating liquor sold, or exposed for sale, by him, any deleterious or noxious ingredient, and every person who knowingly sells, keeps or exposes for sale any intoxicating liquor mixed with any such deleterious or noxious ingredient, shall, on conviction for a first offence under this section, be subject to a fine not exceeding eighty dollars, or imprisonment not exceeding thirty days, with or without hard labor, and the forfeiture of all adulterated liquor in his possession, and of his license, and such person shall thereafter be incapable of again holding a license.

15. Any person having possession of any adulterated

Intoxicating Liquors.

liquors or deleterious ingredient, unless he can account for the possession of the same to the satisfaction of the Justices, shall be deemed knowingly to have exposed the same for sale, and the inspector of police or other policeman, authorized in writing by a stipendiary Magistrate, may procure samples of liquor on payment or tender of their value and have the same analyzed.

16. It shall be lawful for any constable, when authorized in writing by a stipendiary Magistrate, to enter any dwelling-house, shop, store, cellar, ship, vessel, boat, public or private saloon or room, or any place whatsoever and wheresoever where intoxicating liquor is sold or kept for sale, and take therefrom a sample of such liquor not exceeding in quantity one half-pint from any one cask, puncheon, or other vessel, for the purpose of testing or analysis. Any person obstructing any constable acting under the authority of this section shall incur a penalty not exceeding one hundred dollars.

17. Any holder of a retail license who shall permit any intoxicating liquors to be drunk on his premises by any person apparently under the age of eighteen years, shall be liable to a penalty not exceeding fifty dollars. (1)

18. No holder of a license to sell intoxicating liquors shall sell or deliver any intoxicating liquors to any person apparently under the age of eighteen years, under a penalty not exceeding fifty dollars.

(1) The burthen of proof that a child apparently under eighteen is really above that age, will be on the defendant (Stone, 226). In all cases the Magistrate should obtain evidence, generally from the parents, as to the young person's real age.

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19. When it shall be proved on oath, to the satisfaction of any stipendiary Magistrate, that any person is an habitual drunkard, or is injuring his health by excessive drinking, or neglecting his family, it shall be lawful for the said Magistrate to cause a written or printed notice to be given to all licensed publicans within his jurisdiction, prohibiting all such persons from supplying such habitual drunkard with any intoxicating liquor for any term not exceeding two years; and if any person shall, after the receipt of such notice, supply such habitual drunkard with any intoxicating liquor, the person who so supplies shall be liable to a penalty not exceeding one hundred dollars, or imprisonment for a period not exceeding thirty days. (1)

20. If any person holding a license shall purchase from any person wearing apparel, tools, implements of trade or husbandry, fishing gear, household goods or furniture, made up, either by way of sale or barter, directly or indirectly, for intoxicating liquor, or shall receive from any person any goods in pawn, any Stipendiary Magistrate, on sufficient proof on oath being made before him of the facts, may issue his warrant for the restitution of all such pro-

(1) A notice under this section may be in the following form:—

DISTRICT. Newfoundland.

To Island Cove. licensed publicans at in the said District.

Whereas it has been proved on oath to my satisfaction that , of
fisherman, is an habitual drunkard (or is injuring his health by
excessive drinking, or is neglecting his family, as the case may be). I therefore
prohibit you from supplying said with any intoxicating
liquor for the term of year, under a penalty not exceeding 30 days.

Stipendiary Magistrate.

On the trial of any person who, after this notice, sells liquor to the habitual drunkard, the notice and service by the constable should be proved; and if the accused is convicted the fine should be heavy, unless there are mitigating circumstances.

Intoxicating Liquors.

perty, and for the payment of costs; and, in default thereof, the warrant shall contain such directions, for levy and sale of the offender's goods for the amount of such property so pawned, sold or bartered, and the offender shall also be liable to a penalty not exceeding ten dollars. (1)

21. No person shall be allowed to recover or be allowed to set off any charge for intoxicating liquor in any quantity less than one gallon, delivered at one and the same time; and all specialties, bills, notes or agreements, given in whole or in part to secure such charge shall be void as respects such charges.

22. All licensed houses shall be absolutely closed, and no business whatever done therein, and no intoxicating liquors delivered or consumed therein

(1.) Between the hours of nine p.m. and seven a.m. from the first day of January to the thirty-first day of March, both inclusive;

(2.) Between the hours of ten p.m. and 5 a.m. from the first day of April to the thirty-first day of December, both inclusive; and

(3.) On Sunday, Christmas Day and Good Friday;

under a penalty not exceeding forty dollars for the first offence, eighty dollars for the second offence, and one hundred dollars for the third or any subsequent offence; and,

(1) Requiring the purchaser to return all the articles sold and lose payment for the liquor consumed, will, in general, be sufficient punishment. Only in bad cases should a fine be inflicted.

in default of payment, of imprisonment for any term not exceeding one month for the first offence, three months for the second offence, and six months for a third or subsequent offence, with or without hard labor. (1.)

23. If during any period in which any licensed premises are required to be closed under the provisions of this chapter, any person is found on such premises he shall, unless he satisfies the Court or Justice that he was an inmate, servant or lodger in such premises, or that his presence there was not in contravention of this chapter, be subject to a fine not exceeding ten dollars.

24. If any person licensed under this chapter permits drunkenness, or any violent, quarrelsome, riotous, or disorderly conduct to take place on his premises, or sells or delivers intoxicating liquor to any drunken person, or permits any drunken person to consume any intoxicating liquor on his premises, or permits and suffers persons of notoriously bad character to assemble or meet on his premises, or suffers any gambling or any unlawful game to be carried on on his premises, he shall be subject to a penalty not exceeding forty dollars. (2)

25. If any licensed person knowingly harbors or knowingly suffers to remain on his premises, any constable

(1) Section 19 of the License Act of 1875 was amended in 1835, and this section substituted in order to remove doubts as to the closing of public houses on Sunday, &c.

(2) Selling liquor to a drunken person, or permitting him to consume liquor on the premises, are difficult offences to prove; but when clearly proved they should be punished severely. It is no excuse in law that the publican was unaware of the person served being drunk.

during any part of the time appointed for such constable to be on duty, unless for the purpose of keeping or restoring order, or in execution of his duty, or supplies any liquor or refreshment whatever, by way of gift or sale, to any constable on duty, unless by authority of some superior officer of such constable, or bribes, or attempts to bribe, any constable, he shall be subject to a penalty not exceeding eighty dollars.

26. Any licensed person may refuse to admit to, and may turn out of, the premises in respect of which his license is granted, any person who is drunken, violent, quarrelsome, or disorderly, and any person whose presence on his premises would subject him to a penalty under this chapter; and any such person who, upon being requested, in pursuance of this section, by such licensed person or his agent, or servant, or any constable, to quit such premises, refuses or fails to do so, shall be subject to a penalty not exceeding twenty dollars, and all constables are required, on demand of such licensed publican, his agent or servant, to expel or assist in expelling every such person from such premises, and may use such force as may be required for that purpose.

27. Any two justices of the peace, or any stipendiary magistrate, acting for any district or place where any riot or tumult happens or is expected to happen, or where any election may be taking place or is about to take place, may order every licensed person in or near the place where such riot or tumult happens or is expected to happen, or where such election is taking place or is about to take place, to close his premises during any time which

the justices or magistrate may order; and any person who keeps open his premises for the sale of intoxicating liquors during any time during which the justices have ordered them to be closed, shall be subject to a penalty not exceeding one hundred dollars; and it shall be lawful for any person, acting by order of such justices or magistrate, to use such force as may be necessary for the purpose of closing such premises.

28. All constables or policemen, within their respective districts, may, at such times as they may think fit, visit all unlicensed houses where there shall be reasonable grounds to suspect intoxicating liquors are sold, also the shops and public rooms of persons holding licenses, to see that the several provisions of this chapter are complied with; and they are hereby required and commanded to prosecute all offenders under this chapter, under pain of being dismissed from their respective offices, or of being fined a sum not exceeding fifty dollars; and in case any person or persons keeping licensed or unlicensed public houses or shops or public rooms, or any persons being in or about such shops, rooms, licensed or unlicensed public houses, at the time any constable or policeman may be visiting the same, shall interrupt or assault such constable while in the execution of the provisions of this chapter, or shall refuse or fail to admit such constable demanding to enter, in pursuance of this section, into any premises or place occupied by or under control of such licensed or unlicensed person, or who, having admitted such constable, refuses or fails to allow him to take an account of any intoxicating liquor found therein, or to furnish him with such light or assistance as he may require, shall be subject to a penalty not exceeding forty dollars.

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29. Any constable who may discover or be aware of the sale of intoxicating liquor by any unlicensed person, shall forthwith seize and remove such liquor found upon the premises of such person, and shall, immediately after such seizure and removal, proceed in manner provided by law for the conviction of the person selling such liquor, and in any case where there shall be a conviction for the sale of intoxicating liquor by any unlicensed person, the Justice before whom such conviction shall be had may order all intoxicating liquor found upon the premises of such unlicensed person to be, and the same shall thereupon be, confiscated.

30. In any case where a constable seizing such liquor shall have, without delay, proceeded for conviction as aforesaid, but the person proceeded against shall not be convicted and the Justice before whom such proceedings shall be had shall certify that there was a probable cause of seizure, if any action or other suit or prosecution shall be brought to trial against such constable on account of such seizure, and a verdict or judgment shall be given against the defendant, the plaintiff, besides the things seized or the value thereof, shall not be entitled to more than five cents damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined more than one dollar.

31. If any person holding a retail license shall be guilty of a violation of any of the provisions of this chapter, or of the terms or conditions of his license, for which a penalty or punishment is not herein provided, he shall be liable to a penalty for every offence not exceeding twenty-five dollars.

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32. Whenever a stipendiary Magistrate may deem it expedient he may grant a retail license to any person to sell intoxicating liquors for a period not exceeding six consecutive days, and upon such terms as regards payment and hours of closing as the said Magistrate may specify in the said license. The tent, booth, room, or other place where such intoxicating liquor shall be sold under such license shall be deemed to be a licensed premises within the meaning of this chapter, and the person so temporarily licensed shall be subject in all respects, except as to the amount of license fee and hours of closing, to the provisions of this chapter.

33. No intoxicating liquors shall be carried in any ship, vessel or boat engaged in any fishing or trading voyage, except vessels engaged on a sealing voyage, beyond such quantity (not exceeding four gallons) as may be *bona fide* required or necessary for ship's stores. All liquors carried on board any ship, vessel or boat, in contravention of this section, shall, on conviction, be forfeited to the Crown, and the master of the said ship, vessel or boat so carrying the same, as well as the owner thereof, or either of them, if cognizant of or consenting thereto, shall be subject to a penalty not exceeding two hundred dollars.

34. All constables are authorized and required to board and search any ship, vessel or boat, if there shall be reasonable ground to suspect that any intoxicating liquor is contrary to law there kept, or secreted, or sold, or kept for purpose of sale. Any person obstructing any constable acting under the authority of this section shall be liable to a penalty not exceeding one hundred dollars.

LEGAL PROCEDURE.

35. All prosecutions under this chapter for penalties, fines, or forfeitures, shall be commenced within six calendar months after the same shall have been incurred, and shall and may be recovered upon view by a Justice of the Peace, or upon the complaint in writing of any person who may inform and sue for the same; and in all such cases shall be tried according to the practice of Justices in summary cases under the Imperial Act 11 and 12 Victoria, chapter 43, except as provided for in this chapter; with the same powers of adjudicating in cases of default, and of compelling the attendance of witnesses, and also a power of distress and sale of goods and chattels of all persons convicted under this chapter; and if such penalties are not paid immediately, such person so convicted may be committed by the convicting Justice to the nearest gaol for a period not exceeding thirty days.

36. In proving the sale or consumption of intoxicating liquor for the purpose of any proceeding, relative to any offence under this chapter, it shall not be necessary to show that any money actually passed, or any intoxicating liquor was actually consumed, if the Court, hearing the case, be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of intoxicating liquor was about to take place; and proof of consumption, or intended consumption, of intoxicating liquor on premises to which a license under this chapter is attached, by some person other than the occupier of, or a servant in, such premises, shall be evidence that such liquor was sold to the person consuming, or being about to consume,

or carry away the same, by or on behalf of the holder of such license.

37. Upon the trial of any person for the selling of intoxicating liquor without a license, if it shall be proved that bottles, or decanters, or tumblers, or glasses, or other vessels which are usually employed for holding and using intoxicating liquor, were found in and upon the premises of such accused person, and had been recently used, or that persons were found drinking or drunk on the said premises, this shall be deemed sufficient *prima facie* evidence of violation of the third section of this chapter, and to cause such accused person to account for the purposes for which such articles were on his premises, and to require him to establish his innocence by proof.

38. In any proceeding instituted for a breach of the provisions of this chapter, the defendant, if claiming any exemption, exception, proviso, excuse or qualification, may set up the same as a defence, in which case the burden of proof shall be thrown on such defendant, and it shall not be necessary in the summons to specify the particular sort of liquor sold, nor to whom, nor the time when sold; but it shall be sufficient in the summons to charge the party accused with the breach of some section of this chapter; and no judgment shall be withheld on account of variance between proof and summons, if it appears to the satisfaction of the Magistrates or the Court that the defendant was aware of the real cause of complaint; but if the defendant make affidavit that he has been taken by surprise, the Magistrate or Court may grant him further time to make a full defence on the merits, and no judgment shall be set aside for any variance, or from any formal objection.

Any sale of intoxicating liquor made on the premises of any person by the wife, child or servant of such person, shall be considered presumptively as the act of the husband, parent or master, and shall be punished in the same way as if such sale had been made by such husband, parent or master in question.

40. Either party feeling aggrieved by any conviction, judgment or sentence of any Justice under the provisions of this chapter, may appeal to the Supreme Court sitting in St. John's or in Circuit, subject to the following conditions, viz.: that the appellant shall give to the said Justice, where the conviction, judgment or sentence is had, made or imposed, in the central district within three days, and if elsewhere within ten days, notice of his intention so to appeal; and shall, within the respective periods aforesaid, enter into recognizance, with two sufficient sureties, before the said Justice, conditioned to appear at the first ensuing sitting of the Supreme Court, either in term or in vacation, and to prosecute such appeal with effect and to abide by the judgment of the said Court thereupon, and to pay such penalty and costs, or perform such other act or comply with such conditions as may be then ordered or imposed. (1)

41. Where either party appealing under the authority of this chapter, has given or tendered the security mentioned in the previous section, judgment shall be thereupon stayed until the event of the appeal is certified to

(1) A case may be stated for the opinion of the Supreme Court on a question of law. This is the form in which all license cases are brought before the Superior Courts in England (see Justices of the Peace stating a case).

such Justice by rule of Court, and the Justice whose adjudication is appealed from, shall forthwith transmit to the clerk of the proper appellate court a full and accurate record, consisting of the depositions, if any, the warrant or summons (as the case may be), the convictions, judgment or sentence, had, made or imposed, and a copy of all the evidence taken in the cause, and a statement of all evidence to the admissibility of which exception has been taken at the hearing, the grounds of objection thereto, and the order thereon, and of all evidence tendered or excluded, and of the exceptions, if any, made thereon. The appellate court shall, on the filing of such record, upon motion of either party, proceed to hear and determine such appeal, and the court may amend, reform, correct, reverse or vary such conviction, judgment or sentence, as may appear just, and to that end may receive further evidence if deemed necessary.

42. No conviction or order shall be quashed for want of form, and no warrant of commitment shall be held void by reason of any defect therein, provided that there is a valid conviction to maintain such warrant, and it is alleged in the warrant that the party has been convicted.

43. In all cases where a person is convicted of a breach of the provisions of this chapter, the Justice before whom such conviction is had may, in addition to or in substitution for any penalty, declare the license of every such person so convicted to be forfeited.

44. Married women and servants concerned in any breach of the provisions of this chapter, shall be liable for

the penalty thereto attaching as if they were unmarried women or principals, but the husband or master of the person so offending shall not be liable to be also sued for the same offence; but in case of married women, distress may issue against the property of the husband.

45. Every fine and penalty, recoverable under this chapter, shall be appropriated in the following manner: one-third to the informer; one-third to the officer in charge of the Newfoundland Constabulary Force, for the purpose of being appropriated towards the relief of the widows and orphans of deceased members of the said Force; and one-third to the Receiver General; out of which last sum may be defrayed the expenses of prosecution.

46. The provisions of this chapter are declared, subject as hereinafter provided, to extend and apply to the coast of Labrador, with the exception of the following sections, that is to say: four, five, six, seven and nine.

47. Any stipendiary Magistrate within his district may, at any time during the month of May or June in any year, grant a license to any person approved by him, resident within his jurisdiction, to sell intoxicating liquors on the coast of Labrador, which license shall be in force until the end of the then fishing season and no longer.

48. Every application for a license shall specify the particular premises upon which the business, in respect of which the license is sought, is to be carried on, and the license issued thereon shall in all cases specifically limit the operation thereof to such described premises, and no license shall be issued authorizing the sale of liquors by the

same person in any more than one harbor or place, or for more than one premises in any harbor or place.

49. License fees for the coast of Labrador shall be fixed by the licensing Magistrate, and shall not be less than fifty dollars.

50. If any person shall be convicted of selling intoxicating liquors upon the coast aforesaid, elsewhere than on shore, he shall incur a penalty of not less than one hundred dollars.

51. No intoxicating liquors shall be sold, given, or delivered to any Esquimaux Indian under a penalty of two hundred dollars.

52. Any stipendiary Magistrate, anywhere, or any Justice of the Peace upon the coast of Labrador, shall have cognizance of any offence under this chapter.

RULES

Made by the Stipendiary Magistrate for the Central District of Newfoundland, respecting the application for, and the times and modes of granting, Licenses for the Sale of Intoxicating Liquor, under the provisions of the License Act, 1875, and the various Acts in amendment thereof.

[Approved by the Governor in Council on the 3rd day of March, 1893, and published by their authority.]

1.—Licenses shall be granted only during the first seven

Intoxicating Liquors.

days in October in each year, of which due notice shall be given in the *Royal Gazette* and one other local newspaper, and all the said licenses shall be made to terminate on the first day of November in each year.

2.—The Clerk of the Peace in the Central District shall, on or before the 15th day of September in each year, publish in the *Royal Gazette* a list of all licenses which will expire on the next first day of November.

3.—All applications for retail licenses shall be in writing, and in such application the name, occupation and residence of the applicant shall be stated; also a particular description of the premises for which a license is applied for, and the names of the persons who are proposed as his securities.

4.—Applicants for new retail licenses shall make their applications to the Clerk of the Peace for the Central District, prior to the Fifteenth day of September in each year, and the list of such applicants shall be affixed to the Court House door, for two weeks prior to the first days of October in each year.

5.—All parties who may have any objection to make against the granting of any retail license may attend before the Magistrates and state their objections on the said first week in October.

St. John's, March 4th, 1893.

D. W. PROWSE,

J. G. CONROY,

Stipendiary Magistrates for Nfld.

SCHEDULE A.**FORM OF WHOLESALE LICENSE.**

NEWFOUNDLAND, }
 District, S. S. }

License is hereby granted to _____, of _____, in the district of _____, to sell intoxicating liquors in quantities not less than two gallons, but no part thereof shall be consumed on the premises; this license to remain in force until the _____ day of _____, A.D. 18 _____, and to be held on the terms and conditions contained in chapter 130 of the Consolidated Statutes (second series), or other Acts which shall be in force during the continuance of this license, respecting such wholesale licenses for the sale of ale, wines and spirituous liquors.

Given under my hands (or my hand) this _____ day of _____, A.D. 18 _____.

A. B., Stipendiary Magistrate,
 C. D., Stipendiary Magistrate,
 for the _____ district.

Received from the said _____ the sum of _____ dollars, being the amount due for such wholesale license for one year from the _____ day of _____, A.D., 18 _____, to _____ day of _____, A.D. 18 _____.

St. John's, _____ day of _____, A.D. 18 _____.

E. F., Clerk of the Peace (or J. P.)

Intoxicating Liquors.

FORM OF RETAIL LICENSE.

NEWFOUNDLAND, }
 District. }

By virtue of the powers vested in us (or in me) under chapter 130 of the Consolidated Statutes (second series), we, two (or I, one) of Her Majesty's stipendiary Magistrates for the said district, do hereby license of _____, in the said district, to sell by retail, in the premises now occupied by the said _____, situate at (here describe particularly the situation of the premises), and not elsewhere, ale, wines, spirituous and malt liquors, for the period of one year from the date hereof; subject, in all respects, to the provisions of the said chapter, or any Act to be passed during the continuance of this license, and all rules and regulations made thereunder.

Given under our hands (or my hand) at _____
 in the said district, this _____ day of _____
 A.D. 18 _____

A. B., Stipendiary Magistrate for _____ district.

C. D., Stipendiary Magistrate for _____ district.

Received from the said _____ the sum of _____
 dollars, being the license money for the above re-
 tail license for one year from this date.

E. F., Clerk of the Peace for _____ district.

or, J. P. for _____ district.

DISTRICT,) NEWFOUNDLAND.

To Wit.

Taken and acknowledged before me on the day }
and year, and at the place aforesaid. }

Stipendiary Magistrate

DISTRICT,) NEWFOUNDLAND.

To Wit.

Be it remembered that on the _____ day of _____, 189____, in _____ said District, _____, Police Constable, came before me, the undersigned Stipendiary Magistrate _____, and informed me that on the _____ day of _____, 189____, at _____ aforesaid, a breach of the Second Section of the "License Amendment Act of 1895," and the Consolidated Statutes

Intoxicating Liquors.

of Newfoundland (new series), and any amendments thereof, was committed by

Taken and acknowledged before me on the day }
and year, and at the place aforesaid. }

Stipendiary Magistrate

ORDINARY FORM OF SUMMONS.

DISTRICT, } NEWFOUNDLAND.

To Wit.

To

hereafter called Defendant.

Upon the complaint of
you the said Defendant are hereby required to appear in
your proper person before the undersigned Stipendiary
Magistrate , at the Court House, in

on the day of , by
Eleven of the clock in the forenoon of said day, for that
you the said Defendant, on the day of

, did commit a breach of the
Section of chapter 130 of the Consolidated Statutes (second series), and the various Acts in amendment thereof,
by which you have made yourself liable to a penalty of
not exceeding dollars.

Dated at , Newfoundland, this day
, 189 .

Stipendiary Magistrate

FORM OF CONVICTION.

DISTRICT, } Newfoundland.
 To Wit: }

Be it remembered that on the day of
 189 , in the said District, A. B., hereafter
 called the defendant, is convicted before me, the under-
 signed Stipendiary Magistrate for the said District, for that
 he the Defendant on the day of
 189 , did commit a breach of the section of
 chapter 130 of the Consolidated Statutes (second series
 and the Acts in amendment thereof,) and I do adjudge
 the defendant for this said offence to pay the sum of
 dollars, to be paid and applied accord-
 ing to law, and also the sum of dollars
 costs; and if the sum be not paid forthwith I adjudge the
 said defendant to be imprisoned in the gaol at
 for the space of days,
 unless the said sum shall be sooner paid.

Given under my hand and seal at this
 day of 189 .
 Signed,

 Stipendiary Magistrate.

If the Magistrate decides to levy the fine by distress follow
 the form given for conviction for a penalty to be levied
 by distress, and in default of sufficient distress, impris-
 onment.

Commitments may be readily framed from the general
 form of warrants of commitment, given under the head
 of Summary Jurisdiction.

FORM OF NOTICE OF APPEAL.

Complainant,

v.

Defendant.

To Esquire, Stipendiary Magistrate.

Take notice that I, the above defendant (or complainant), do intend to enter and prosecute an appeal to the first ensuing sitting of the Supreme Court at _____, against a certain conviction made by you bearing date _____ day of _____, 189____, whereby I was convicted of a breach of the _____ Section of the Consolidated Statutes, chapter 130 (new series), and the Acts in amendment thereof, and for which said breach you adjudged that I should pay a penalty of _____ dollars, and that if not paid immediately I should be imprisoned at _____ for the period of _____ days (this must be stated as in the conviction); and further take notice that the grounds of my appeal are (here state all the grounds of appeal).

Dated at _____ this _____ day of _____, 189____.

FORM OF BOND IN APPEAL.

DISTRICT, }

Newfoundland.

To Wit: }

Be it remembered that on this _____ day of _____, 189____, A. B. of _____,

hereafter called the surety or sureties, personally came before me the undersigned Stipendiary Magistrate for the said district, and acknowledged themselves to owe to our Sovereign Lady the Queen the following sums: the appellant the sum of _____ dollars, and the sureties each the sum of _____ dollars. (Here insert a sum suffi-

cient to cover the penalty and all costs), to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our Lady the Queen, her heirs and successors, of the said A. B. shall make default in the condition underwritten

The condition of the above recognizance is such that if the said appellant shall appear at the first ensuing sitting of the Supreme Court at _____, and there enter and prosecute his appeals against a certain conviction bearing date the _____ day of _____, 189____, and made by me, the said Magistrate, whereby he was convicted of having committed a breach of the _____ Section of the 130 chapter of the Consolidated Statutes (second series), and the Acts in amendment thereof; and further, if the said appellant shall abide by the judgment of the Court thereon, and pay such costs as by the Court shall be awarded them, their recognizance to be void, else to remain in full force and virtue.

N.B.—The Consolidated Statutes (new series), chapter 130, contains all the law concerning the Sale of Intoxicating Liquors, with the exception of the amendments introduced by the Act 59 Victoria, cap. 20. All these amendments have been introduced into my consolidation of the law; the Magistrates, however, must be careful to follow the section in the Consolidated Statutes and in this Act.

INTOXICATING LIQUOR AMEND- MENT ACT—1895.

1. Section one of the Act 51 Vic., Cap. 16, is hereby repealed and the following is substituted therefor:

1. The term "Intoxicating Liquors" in "The License Act, 1875," and in the Acts in amendment thereof, shall be construed to signify spirits, wine, ale, beer, porter, and any fermented, distilled, spirituous or other liquor, containing two per cent. or upwards of alcohol by volume.

2. Section two of the Act 51 Vic., Cap. 16, is hereby repealed and the following substituted therefor:

2. No intoxicating liquor shall be sold unless by license under a penalty not exceeding fifty dollars for the first offence, one hundred dollars for the second offence, and two hundred dollars for a third or any subsequent offence; and, in default of payment, of imprisonment for any term not exceeding one month for the first offence, three months for the second offence, and six months for a third or subsequent offence, with or without hard labor.

3. Section fifteen of "The License Act, 1875," is hereby repealed and the following substituted therefor:

15. Any holder of retail license who shall permit any intoxicating liquors to be drunk on his premises by any person apparently under the age of eighteen years shall be liable to a penalty not exceeding fifty dollars.

4. Section four of the Act 45 Vic., Cap. 7, is hereby repealed and the following substituted therefor:

No holder of a license to sell intoxicating liquors shall sell or deliver any intoxicating liquors to any person apparently under the age of eighteen years, under a penalty not exceeding fifty dollars.

5. Section nineteen of "The License Act, 1875," is hereby repealed and the following substituted therefor:

19. All licensed houses shall be absolutely closed, and no business whatever done therein, and no intoxicating liquors delivered or consumed therein

(1.) Between the hours of nine p. m. and seven a. m. from the first day of January to the thirty-first day of March, both inclusive;

(2.) Between the hours of ten p.m. and six a.m. from the first day of April to the thirty-first day of December, both inclusive; and

(3.) On Sunday, Christmas Day and Good Friday;

under a penalty not exceeding forty dollars for the first offence, eighty dollars for the second offence, and one hundred dollars for the third or any subsequent offence; and, in default of payment, of imprisonment for any term not exceeding one month for the first offence, three months for the second offence, and six months for a third or subsequent offence, with or without hard labor.

6. Section thirty-seven of "The License Act, 1875," is hereby repealed and the following substituted therefor:

27. Every fine and penalty, recoverable under this Act, shall be appropriated in the following manner: one-third to the informer; one-third to the officer in charge of the Newfoundland Constabulary Force, for the purpose of being appropriated towards the relief of the widows and orphans of deceased members of the said Force; and one-third to the Receiver General; out of which last sum may be defrayed the expenses of prosecution.

PROHIBITION OF THE SALE OF IN- TOXICATING LIQUORS—(LOCAL OPTION.)

SECTION

1. Majority of electors in districts may make sale of intoxicating liquors unlawful.
2. One-fifth of the electors may, by petition, demand poll.
3. Petition void under certain circumstances.
4. No license to be granted after receipt of petition.
5. Stipendiary Magistrate to be Returning Officer.
6. Oath to be taken.
7. Duty of stipendiary Magistrates.
8. Elections similar to election of members.
9. Explanatory clause.
10. Form of ballot paper.
11. Direction to electors.
12. Duty of Returning Officer.

SECTION

13. Time for taking new poll.
14. How proclamation repealed and licenses again issued.
15. Liquors containing two per cent. alcohol by volume, declared to be intoxicant.
16. Penalty for breach.
17. Penalty for breach.
18. Penalty for breach.
19. Proceeding for recovery of penalties.
20. Licensees without a proclaimed district not authorized to sell within proclaimed limits.
21. Sale on board vessels prohibited; penalty.
22. Respecting fees upon an election.
23. Title.

1. When it shall have been made to appear to his Excellency the Governor in Council in manner hereinafter provided, that a majority of the duly qualified electors of any

electoral district enumerated in the next succeeding section of this chapter, or of any town, harbor or settlement in this colony, as defined by the said succeeding section, who shall vote at a poll to be taken as hereinafter specified, have declared themselves to be in favor of a prohibition of the sale of intoxicating liquors in their locality and against the issue of licenses therefor, it shall be lawful for his Excellency the Governor to issue a proclamation in the ordinary form, having embodied therein the simple declaration that such sale of intoxicating liquors and such issue of licenses therefor are by such proclamation prohibited within such electoral district, town, harbor or settlement, under the authority and for the enforcement of this chapter, and subject to the provisions and limitations hereby enacted.

2. When a petition shall be presented to the nearest resident stipendiary Magistrate from one-fifth of the electors of—

(1) Any of the following electoral districts: (1)

- The district of St. John's;
- The district of Harbor Main;
- The district of Port-de-Grave;
- The district of Harbor Grace;
- The district of Carbonear;
- The district of Bay-de-Verde.

(1) By Act 60 Vic. cap. 12, Ferryland was struck out, but by reference to the lists taken from the Year Book, 1897, it will be seen that the Temperance Act is in operation in every district in the Island except in St. John's, in many places only portions of districts are included.

By sub-section 2 of section 2 any district, or portion of a district, can petition to have the Temperance Act put in force.

- (2) Any town, harbor or settlement in this colony, or of any such town, harbor or settlement, and any one or more towns, harbors or settlements adjacent thereto, in any electoral district, not named in the preceding sub-section, the limits or boundaries of which town or towns, harbor or harbors, settlement or settlements, shall be set forth in the said petition,

as in form set forth in Schedules A. and B. to this chapter respectively, or to the like effect, requiring a vote to be taken as to whether or not such proclamation shall be issued with regard to their electoral district, town or towns, harbor or harbors, settlement or settlements, it shall be the duty of such stipendiary Magistrate, upon receipt of such petition, to scrutinize the names of the electors to such petition, and being satisfied that the said electors, whose names are subscribed to the said petition, are duly qualified and registered, and after the person or persons who have witnessed the signatures to the said petition shall have sworn before him, or some other stipendiary Magistrate, that he the said witness, or they the said witnesses, were present and saw the said electors sign the said petition after the same had been read over and explained to them, and after the fees and expenses have been secured to the said stipendiary Magistrate, as hereinafter provided, to certify such petition and transmit the same to His Excellency the Governor in Council, who shall appoint, by public notice in some newspaper within the district, division or locality intended to be affected by the said proclamation, or if there be no newspaper published therein, then in some newspaper as near thereto as

may be had, and also by posting up such notices, or copies of the same, at the various polling places within such district, division or locality, such a day in one of the months of October, November, December, January or February next ensuing, as shall be most convenient, and not less than four weeks from the date of such notice, and at a convenient place or places within the said district, division or locality for the taking of the poll to determine whether or not such proclamation shall be issued; said poll to be taken between the hours of eight a.m. and four p.m. of the day so appointed. Should any riot or disturbance take place so as to prevent polling, such poll shall be continued on the next succeeding lawful day.

3. If the said poll shall not take place in one of the months of October, November, December, January or February next after the receipt of the petition by the Governor in Council, the said petition shall be deemed to be void and of no effect.

4. From the time of the receipt by the stipendiary Magistrate of such petition for a poll, no license shall be granted or renewed for a longer period than until the day for taking such poll.

5. On the day appointed for taking the poll such stipendiary Magistrate shall act in the capacity of Returning Officer, unless the Governor shall appoint some other person to act in that capacity; and such officer shall have all the powers for the preservation of the public peace which

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are by law vested in a Returning Officer at any election of representatives to the House of Assembly. (1)

6. The Returning Officer and Poll Clerks shall subscribe and swear to the oath for the due and proper performance of the duties of their respective offices, according to the form prescribed in the schedule C. to this chapter, before any stipendiary Magistrate, the nearest Justice of the Peace, or a Commissioner of Affidavits, and shall be subject to the same penalties for the neglect or proper discharge of their respective duties as are imposed on similar officers in cases of the election of representatives to the House of Assembly.

7. The said stipendiary Magistrate shall furnish the Returning Officer with a correct list of the qualified electors within the electoral district, or locality for which the poll is to be taken, and such Returning Officer shall, in case of doubt, have the power to administer to voters the oaths as to qualification required in cases of the election of representatives to the House of Assembly.

8. All elections under this chapter shall be held and conducted, as nearly as circumstances will permit, in the same manner and subject to the same regulations, conditions and provisions as are made, prescribed and provided in relation to elections of members of the House of Assembly, and all and singular the powers, duties and functions

(1) On the day of the election the Stipendiary Magistrate is authorized to close all the public houses within the area of the portion of the district included in the petition (see section 27, cap. 130, Consolidated Statutes).

of the Governor in Council in relation to the election of the House of Assembly shall apply to elections under this chapter, and returning officers, deputy returning officers, poll clerks, magistrates, justices of the peace, constables, and other officers shall have, exercise, perform and discharge all and singular the same powers, rights, duties and privileges in and about, and in relation to such election as are provided in the case of the election of members of the House of Assembly, save and except as the same may be altered by the provisions of this chapter.

9. The expression "duly qualified electors" in this chapter shall mean electors duly qualified at the time of any election under this chapter to vote at the election of a member of the House of Assembly.

10. The ballot paper to be used at elections held under this chapter shall be according to the form schedule D. to this chapter.

11. Each elector, on receiving his ballot paper, shall forthwith proceed to the compartment of the polling station, set apart for that purpose, and there mark his ballot paper, making a cross on any part of the upper space if he votes in favor of the petition, and in any part of the lower space if he votes against the petition, after which he shall fold up and deposit his ballot paper in the ballot box in the manner required by the provisions of the law in force for the time being, for the election of members of the House of Assembly.

12. After the counting of the votes polled at any election held under this chapter, the Returning Officer shall

immediately certify the number of votes polled for and against the petition to the Governor in Council, forwarding at the same time the ballot boxes and all papers and documents required by the provisions of the law in force for the time being for the election of members of the House of Assembly, and upon receipt of such certificate, if a majority of the votes polled have been in favor of the prayer of the petition, the Governor in Council shall issue a proclamation in accordance with the provisions of this chapter.

13. After a poll has been taken in any electoral district, division of district, or other locality, as hereinbefore defined, no new poll shall be had until after the expiration of three years from the date of the former poll, or from the date of the said proclamation, should the result be in favor thereof; and if no petition for a new poll be signed and forwarded to His Excellency the Governor in Council not less than three months before the expiration of said proclamation, the operation of the said proclamation with reference to such district, division of district, or locality, shall be considered as agreed to by the electors thereof, and shall continue in full operation and effect, without any necessity for the issue of a new proclamation, for three years from the expiry thereof, and so on in like manner shall be continued in operation and effect for every successive period of three years without any necessity for the issuing of a new proclamation until a petition for a new poll be made in the manner hereinbefore provided.

14. When a petition shall be presented in the form set forth in the schedules E. and F. respectively, and in the

manner prescribed by section two of this chapter, from one-fifth of the duly qualified electors of any district or locality in which a proclamation prohibiting the sale of intoxicating liquors therein shall have been in operation, requiring a vote to be taken as to whether or not such proclamation shall be repealed, the provisions of the said proclamation and of this chapter shall remain and continue in force as provided by section thirteen, unless a majority of the duly qualified electors, who shall vote at an election to be held in pursuance of the said petition, shall declare themselves to be in favor of such petition and of the repeal of the said proclamation.

15. From the day in which a proclamation shall be issued within any electoral district or locality prohibiting the sale of intoxicating liquors therein, and during the operation of the said proclamation, no person (unless it be for exclusively medicinal or sacramental purposes, or for *bona fide* use in some art, trade or manufacture) shall, within the limits of such electoral district or locality, expose or keep for sale, or directly or indirectly, or by any pretence or device, sell or barter, or in consideration of the purchase of any other property give to any person any intoxicating liquor or liquors, and no new license for the sale of intoxicating liquors shall be granted during the said period. The term "intoxicating liquors" in this chapter shall be construed to signify all ale, wines, malt, brewed or spirituous liquors containing two per cent. or upwards of alcohol by volume.

16. If anyone knowingly sells or delivers, or causes to be sold or delivered, any intoxicating liquors for the pur-

pose of sale in any place wherein the sale of intoxicating liquors is illegal, (except for the purposes mentioned in the foregoing section), he shall incur a fine not exceeding four hundred dollars, or, in default of payment, imprisonment not exceeding three months, with or without hard labour.

17. Any person who, in the employment or on the premises of another, exposes or keeps for sale, or sells, or barter, or gives any intoxicating liquor or liquors in violation of the preceding section, shall be held equally guilty with the principal and incur the same penalty.

18. Any person violating the fifteenth section of this chapter shall be liable to the same penalties as are imposed upon persons selling intoxicating liquors without a license under the existing license laws.

19. All penalties under this chapter shall be sued for, imposed, recovered, and appropriated in the same manner, and subject to the same provisions as in cases of violation of the said license laws, and the proceedings for the recovery of such penalties shall be subject to the same provisions with respect to appeal, revocation, or removal by writ of *certiorari*, or otherwise, as in the case of penalties under the said license laws; and all intoxicating liquors found upon the premises of any person convicted of violating this chapter shall be destroyed by order of the convicting Magistrate.

20. During the continuance of any proclamation issued under this chapter, with respect to any electoral district, division of district, or locality, no license for the sale of in-

Intoxicating liquors in any locality beyond the limits of such electoral district or locality shall be of any avail for the purpose of authorizing the sale of any such liquors within the limits of such electoral district or locality, and any sale of intoxicating liquors within the limits of such electoral district or locality, effected under the assumed authority of such license, shall be deemed to be a violation of the fifteenth section of this chapter, and shall incur the same penalties as a sale of intoxicating liquors without a license.

21. From the day in which such proclamation shall be issued within any electoral district or locality, and during the operation of this chapter therein, it shall not be lawful to sell, barter, or give in consideration for any property, any intoxicating liquors, as aforesaid, on board any vessel lying in any harbor within the limits of the said electoral district or locality. Any person so offending shall incur the penalties prescribed in the eighteenth section of this chapter.

22. The fees to be paid for poll booths, to returning officers and poll clerks under this chapter, shall be: poll booth, four dollars; returning officer, ten dollars; poll clerk, four dollars; which, with any other expenses incurred under this chapter, shall be paid by the inhabitants of the district or locality demanding a poll, and shall be secured to the stipendiary Magistrate at the time of the presentation of the petition to him and before forwarding thereof to the Governor in Council.

23. This chapter may be cited as "The Temperance Act."

SCHEDULE A.**FORM OF PETITION FOR A POLL FOR AN ELECTORAL DISTRICT.**

We, the undersigned electors of the electoral district of _____, do hereby request that a poll may be taken of the electors of the said district to determine whether or not a proclamation prohibiting the sale of intoxicating liquors and the issue of licenses therefor shall be issued in this district, under the authority and for the enforcement of "The Temperance Act."

SCHEDULE B.**FORM OF PETITION FOR A POLL FOR TOWNS, HARBORS, SETTLEMENTS, &C.**

We, the undersigned electors resident within the limits or boundaries herein set forth, do hereby request that a poll may be taken of the electors resident within the said limits to determine whether or not a proclamation prohibiting the sale of intoxicating liquors and the issue of licenses therefor shall be issued, to apply and be in force within the said boundaries or limits, under the authority and for the enforcement of "The Temperance Act." The boundaries or limits within which it is requested that the said poll shall be taken and the said proclamation applied are as follows: (Here define the boundaries or limits)

SCHEDULE C.**FORM OF RETURNING OFFICER AND POLL CLERK'S OATH.**

I, _____, do swear that I will honestly, impartially,

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and without favor to any party, take the polls at the election held under "The Temperance Act," and that I have not directly or indirectly received, nor will I hereafter directly or indirectly receive, any money, gift, reward, promise, contract, or security for money, or other reward, for or in respect of the conduct I shall observe during or at the close of the ensuing poll, save and except such lawful compensation as I shall be entitled to receive in virtue of my appointment and the faithful and just execution of my duty as

(Deponent's name).

Sworn before , at , this day of
, in the presence of

(Magistrate's name).

SCHEDULE D.

FORM OF BALLOT PAPER.

Voting on the petition of the electors of
under the provisions of "The Temperance Act."

For the Petition	X
Against the Petition	X

N.B.—The crosses are for illustration.

SCHEDULE E.

FORM OF REQUISITION FOR A POLL FOR AN ELECTORAL
DISTRICT FOR THE REPEAL OF PROCLAMATION.

We, the undersigned electors of the electoral district of _____, do hereby request that a poll may be taken of the electors of said district to determine whether or not the proclamation prohibiting the sale of intoxicating liquors now in force in this district, under the authority and for the enforcement of "The Temperance Act," shall be repealed.

SCHEDULE F.

FORM OF PETITION FOR A POLL FOR TOWNS, HARBORS,
SETTLEMENTS, &C., FOR REPEAL OF PROCLAMATION.

We, the undersigned electors, resident within the limits or boundaries hereinafter set forth, do hereby request that a poll may be taken of the electors resident within the said limits to determine whether or not the proclamation prohibiting the sale of intoxicating liquors and the issue of licenses therefor, now in force within the said boundaries or limits, under the authority and for the enforcement of "The Temperance Act," shall be repealed. The boundaries or limits within which it is requested that the said poll shall be taken and the said proclamation applied are as follows: (Here define the boundaries or limits).

INFORMATION.

To Wit,

Taken and acknowledged before me on the day }
and year, and at the place aforesaid. }

Stipendiary Magistrate

DISTRICT,) NEWFOUNDLAND.

To Wit.

To

hereinafter called Defendant.

Upon the complaint of _____ you the
said Defendant are hereby required to appear in your
proper person before the undersigned Stipendiary Magis-
trate _____, at the Court House, in _____,
on the _____ day of _____, by Eleven

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of the clock in the forenoon of said day, for that you the
 said Defendant, on the day of ,
 at , in the said District, did commit a
 breach of the Section of the "Temperance
 Act," and the various Acts in amendment thereof, by
 which you have made yourself liable to a penalty of not
 exceeding dollars.

Dated at this day of , 189 .

Stipendiary Magistrate

The other necessary forms of conviction, &c., can be
 readily prepared from the forms under the License Act.

Intoxicating Liquors.

(From the Year Book of Newfoundland, 1897).

Proclamations Prohibiting the Sale of Intoxicating Liquors.

Date of Proclamation.	Electoral District.	District of or Boundary of District Proclaimed.	Act under which issued.
26th March, 1883.	Twillingate & Fogo	Twillingate, North and South Islands.....	45 Vic., Cap. 9.
"	Bonavista.....	Greenspond, within radius of three miles of Court House.....	do
"	Placentia and St. Mary's.....	Placentia, from S. E. Mountain to Freshwater and Head of N. E. Arm, including S. E. Arm, Point Verde, Placentia (proper), Jersey side, Freshwater. N. E. Arm.....	do
27th Dec., 1883.	Burin	Grand Bank, and extending therefrom two miles from Sea Coast, two miles from East, two miles from West, and two miles from the South.....	do
"	Burin	Fortune, and extending therefrom two miles East, West, North and South.....	do
"	Burin	Lamaline and adjoining Settlements, bounded by and extending from Sandy Cove on the East, to Point Cove on the West, both inclusive, and extending from the Sea Coast one mile inward along the Coast between said points and including the islands lying along and outside the said Coast between said points.....	do
"	Trinity Bay.....	Catalina, Little Catalina and Ragged Harbor.....	do

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27th Dec., 1883.	Trinity Bay.....	The whole of Random Island, from Burnt Head on the North side of Smith's Sound along the main land, and down N. W. Arm to Western Head....	45 Vic., Cap. 9.	do
10th March, 1884.	Fogo.....	Fogo Hr. or Eastern Tickle, Lock's Cove, L. Argent Cove, Seal Cove, Little Seldom-Come-By	do	do
..	Trinity Bay	Settlement of Bird Island Cove, from Ths. Chalk's dwelling-house at Muddy Brook, on South side, to William Oldford's house on North side.....	do	do
24th March, 1884.	Bay-de-Verde	Bay-de-Verde District.....	do	do
28th March, 1884.	Bonavisia Bay.....	Between Greenspond and Cape Freels, comprising Swain's Island, Inner Tickle, Bennet Island, Pinchard's Island, Cape Island, Cobbler's Island, Flower's Island, Morton's Cove, Cold Harbor, Cabot Island, Seal Cove, Pound Cove, Fox Cove, Cape Cove, and all and every other settlement between Cape Freels and district already proclaimed. (See Proclamation, 26th March, '83).	do	do
..	Trinity Bay.....	English Harbor on the North and Spaniard's Bay on the South, viz: English Harbor, Salmon Cove, East and West, Robin Hood, Ship Cove, Trinity, E. W. and S., Cuckold's Cove, Trouty, S. W. Brook, Spaniard's Bay.....	do	do
24th Nov., 1884.	Fogo.....	Barr'd Islands, Joe Batt's Arm, Shoal Bay.....	do	do
6th Dec., 1884.	Trinity Bay	Heart's Content, and extending two miles towards New Perlican, northerly, and five miles towards Heart's Desire, southwardly, and from the Half-way House, eastwardly, to the sea (Trinity Bay) on the west.....	do	do

*Intoxicating Liquors.***Proclamations Prohibiting the Sale of Intoxicating Liquors.**—*Concluded.*

Date of Proclamation.	Electoral District.	District of or Boundary of District Proclaimed.	Act under which issued.
1st March, 1886...	Burgeo & LaPoile.	Burgeo (proper), Hunt's Island, Oar Harbor and Burgeo West.....	do
5th April, 1886....	St. Barbe.....	Extending from Cape Gregory to the eastern point of Lobster Cove, including Bonne Bay, with all several Settlements.....	do
6th Nov., 1886....	Burgeo & LaPoile.	Between Seal Cove and Cape Eay, both inclusive..	do
"	Burin	Between Port-au-Bras and Corbin, both inclusive..	do
9th Nov., 1887....	St. George.....	Comprising the whole of the Bay of Islands inside the North and South Heads, with all islands therein, and reaching to the heads of Humber Sound, Goose Arm, Penguin Arm and North Arm	Renewal of Proclamation of 6th Dec. '84, under 45 Vic., Cap. 9
6th March, 1888....	Carbonear	Carbonear District.....	Renewal of Proclamations of 9th March, 1885.
19th March, 1888..	Port-de-Grave. . .	Port-de-Grave District.....	
8th March, 1889. . .	Harbor Grace.....	Harbor Grace District	
			36 Vic., Cap. 5.

Intoxicating Liquors.

19th March, 1888.	Port-de-Grave.	Port-de-Grave District.	Communications of 9th March, 1885.
8th March, 1889.	Harbor Grace.	Harbor Grace District.	36 Vic., Cap. 5.

18th April, 1889.....	Twillingate	Morton's Harbot, Tizzard's Harbor, Western Head, Whale's Gulch, Chant's Harbor, Carter Cove, and all other Settlements North of Virgin Cove on New World Island.....	52 Vic., Cap. 12.
9th Nov., 1895.	St. George.....	Muddy Hole, South Side, Seal Rocks and Sandy Point.....	do
10th Feb., 1896.....	Trinity.....	Whitbourne, within a radius of three miles from Police Station.....	do
8th Dec., 1896.....	Ferryland	Includes Bay Bulls, Witless Bay, Mobile, Toad's Cove, Burn Cove, Caplin Cove, Bauline and La Manche.....	do

**INTOXICATING LIQUORS NOT ALLOWED TO BE BROUGHT
ON BOARD OF HER MAJESTY'S SHIPS.**

SECTION 1.—Liquors not to be brought on board of Her Majesty's Ships without consent of Commanding Officer; Forfeiture; Penalty.

1. It shall not be lawful for any person to bring on board any of Her Majesty's ships or vessels any spirituous or fermented liquor of any description without the previous consent of the officer commanding the ship or vessel on board of which the same may be brought; and it shall be lawful for an officer in her Majesty's service, or warrant or petty officer of the navy, or non-commissioned officer of marines, with or without seamen or persons under his command, to search any boat or vessel hovering about or approaching, or which may have hovered about or approached any of her Majesty's ships or vessels, and if any spirituous or fermented liquor be found on board such boat or vessel, to seize such spirituous or fermented liquor, and the same shall be forfeited to the Receiver General for the use of the colony; and if any person shall bring any spirituous or fermented liquor on board any of her Majesty's ships or vessels without such previous consent as aforesaid, or shall approach or hover about any of her Majesty's ships or vessels for the purpose of bringing any spirituous or fermented liquor on board the same without such previous consent, or for the purpose of giving or selling without such previous consent spirituous or fermented liquor to men in her Majesty's service, or of aiding or assisting any officer, seaman or marine in her Majesty's service to desert or improperly absent himself from his ship or vessel: every such person shall, upon a summary conviction thereof before a Justice of the Peace, forfeit and pay a sum not exceeding fifty dollars for every such act or

offence; and it shall be lawful for any officer in her Majesty's service, or any such warrant or petty officer, or non-commissioned officer as aforesaid, or for any constable or peace officer, with or without any warrant or other process, to apprehend or cause to be apprehended any such offender or person so acting, and to bring him or cause him to be brought before any stipendiary Magistrate or Justice of the Peace for the purpose of having the offender summarily convicted of the same. Any pecuniary forfeiture under this chapter shall and may be recovered with costs before a stipendiary Magistrate or Justice of the Peace; one-half of the forfeiture so recovered shall go to the party who may inform and sue for the same, and the other half to the Receiver General for the use of the colony.

IRREGULARITY—See under the head of Practice and Summary Jurisdiction.

JOWLS—The barrel shall weigh 200 lbs.; half barrel, 100 lbs.

JUDGES—See District Courts, &c.

JUDGMENT—See Summary Jurisdiction.

JUDICIAL NOTICE.

As a general rule every thing has to be proved in a Court of Justice, but there are certain facts of which all Courts in this Colony are bound to take Judicial notice, without proof, viz : The reign of a Sovereign, The Imperial Statutes, Royal Proclamations, The Acts of the Local Legislature when purporting to be printed by the Queen's Printer (see Consolidated Statutes, new series, p. 2), the Almanac, the divisions of the year, the time of the day, also the *Royal Gazette* of the Colony, and all Proclamations and Public Notices therein.

JUDICIAL OATH—See Justices of the Peace. CTE

JURISDICTION OF JUSTICES—See Justices of the Peace.

JURY—The laws on this subject will be found in the Consolidated Statutes. Juries are not now summoned in the Court of Quarter Sessions, though there is still a right to appeal to a jury in bastardy cases; see under the head Bastardy, p. 76.

JUSTICE OF THE PEACE.

DUTIES, &c.

SECTIONS

1. Office of Justice of the Peace.
2. Justices, how appointed.
3. Commission of Justice of the Peace.
4. Oaths to be taken.
5. Oath of Allegiance.
6. Old form of Oath of Office.
7. Old form of Oaths abolished.
8. Sections of Promissory Oaths' Act, 1874. Form of Official Oath.
9. Form of judicial Oath.
10. Oath of Allegiance, by whom to be taken.
11. Judicial Oath and Oath of Allegiance, by whom to be taken.
12. Official Oath, by whom to be taken; proviso, not to apply where Special Oaths provided.

SECTIONS

13. Officer declining or neglecting to take Oath, disqualified, or to vacate office.
14. Name of British Sovereign for time being, to be substituted from time to time.
15. Affirmation may be made in lieu of Oath.
16. General observation on Oaths, &c. Mandamus, Rule Nisi, of Supreme Court.
17. Justices not to try cases when interested.
18. Justice must be impartial.
19. Quarterly returns of fines, &c.
20. Bribery.
21. Warrants must be executed by Constables.

1. The office of Justice of the Peace is one of great antiquity, and has always been considered, both in Great Britain and in the Colonies, a highly honorable position.

2. Justices of the Peace in this Colony are appointed by the Governor, as the Queen's Representative. The Commission is issued under the Great Seal of the Island, and is headed,—“Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, &c.” The meaning of this is, that by the theory of the British Constitution, the Sovereign is the fountain of honor, of office, and of privilege, (a) and thus the Sovereign alone (or Her Representative, as the Governor for example,) has the power of conferring honors, dignities, or privileges upon

(a) Kerrs, Blackstone p. 65.

Duties of Justice of the Peace.

Her subjects; it will thus be seen that the office and honorable position of a Justice of the Peace in this Island, given to him by his Commission, is constitutionally as much given and granted to him by *Her Majesty*, as the highest office held under the Crown. Another reason also why the Commission is issued in the name of the Queen, is that Her Majesty is the Fountain of Justice and the General Conservator of the Peace in Her Realms, (a) and from the Sovereign alone can any of Her subjects receive authority to administer justice, and in Her name justice is administered all over the Empire.

3. The form of the Commission, which was revised in the latter part of the Reign of Queen Elizabeth, and was then settled nearly in the form now used both in England and in this Colony, requires the Justice "to keep and cause to be kept all Ordinances and Statutes, for the good of our peace and for the preservation of the same;" "to chastise and punish all persons that offend against the form of those Ordinances and Statutes." The next paragraph refers to the authority of Justices of the Peace to bind over to keep the peace all persons who have threatened violence against the persons or properties of their neighbors; then follows the authority and power to hold Quarter Sessions, the regulating of Public Houses, Weights and Measures, and refers in antiquated language to various other subjects all of which are now regulated by Statute, and will be referred to hereafter in their proper places. In the concluding portion of the Commission

(a) Kerrs, Blackstone, p. 64.

Duties of Justice of the Peace.

these words are used, "and, therefore, we command you that to keeping the Peace, Ordinances and Statutes, and all and singular other the premises, *you diligently apply yourself.*"

4. On receiving his Commission, a Justice of the Peace has now, by law, to take two Oaths; first, the Oath of supremacy, which is in the following form:—

5. I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, (Her Heirs and Successors, according to Law,)* so help me God.

6. Secondly, the Oath of Office, which *was* in the following form:—

"You shall swear, that, as Justice of the Peace for the —District of Newfoundland, in all articles in the Queen's Commission to you directed, you shall do equal right to the poor and to the rich, after our cunning wit and power, and after the Laws and Statutes of this Colony thereof made: and you shall not be of Counsel of any quarrel hanging before you: and that you hold your Sessions after the form of the Statutes thereof made: and the issues, fines and amerciaments that shall happen to be made, and all forfeitures that shall fall before you, you shall cause to be entered without any concealment or embezzling, and truly send them to the Receiver General for the use of the Colony. You shall not let for gift or other

* NOTE.—The words "Her Heirs and Successors according to Law," are added in accordance with "The Promissory Oath Act, 1871."

Duties of Justice of the Peace.

cause, but well and truly you shall do your office of Justice of the Peace in that behalf: and that you take nothing for your office of Justice of the Peace to be done, but of the Queen, and fees accustomed and costs limited by the Statute; and you shall not direct or cause to be directed, any Warrant (by you to be made) to the parties, but you shall direct them to the Constables of the said District or other the Queen's Officers, or Ministers, or other indifferent persons, to do execution thereof. So help you God."

7. I have given the preceding form of Oath of Office as it has been taken by a large number of Justices, and until 1874 was the Oath required by Law; it has been now abolished by the Promissory Oaths' Act, 1874, and the Oaths required by Law, at present, are in a much shorter form, and are given below; they are quite as comprehensive as the old Oaths, and are precisely to the same effect:—

SECTIONS OF PROMISSORY OATHS' ACT, 1874.

8. The Oath in this Act referred to as the Official Oath, shall be in the form following, that is to say: "I, ———, do swear that I will well and truly serve Her Majesty, Queen Victoria, in the office of ———, so help me God." (Sec. 3.)

9. The Oath in this Act referred to as the Judicial Oath shall be in the form following, that is to say: "I, ———, do swear that I will well and truly serve our Sovereign Lady Queen Victoria, (*in the office of Justice of*

Duties of Justice of the Peace.

the Peace for the ——— District of Newfoundland,)
and I will do right to all manner of people, after the laws
and usages of this Colony, without fear or favor, affection,
or ill-will, so help me God." (Sec. 4.)

10. The Oath of Allegiance, in the foregoing form, shall
hereafter be tendered to, and taken by, all persons who
are by Law required to take the Oath of Allegiance.
(Sec. 5.)

11. The Judicial Oath and Oath of Allegiance shall be
taken by the Chief Justice and Justices of the Supreme
Court, Judges of District Courts, and by all Stipendiary
Magistrates, Justices of the Peace, or other Persons ap-
pointed to any Judicial Office, as soon as may be after his
acceptance of Office; and such Oaths shall be tendered
and taken in the manner in which the Oath required to be
taken by such officer, previously to the passing of this
Act, on entering his office, would have been tendered and
taken. (Sec. 6.)

12. The Oath of Office shall be tendered to and taken
by all persons who are now, or hereafter may be, required
by Law to take an Oath of Office; provided that this Sec-
tion shall not extend to persons holding Offices for which
special Oaths have been appointed under Acts of the
Legislature. (Sec. 7.)

13. If any Officer required by law to take any of the
Oaths hereinbefore mentioned, declines or neglects, when
any Oath required to be taken by him under this Act is
duly tendered, to take such Oath, he shall, if he has ai-

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ready entered on his Office, vacate the same; and if he has not entered on the same, be disqualified from entering on the same; but no person shall be compelled, in respect of the same appointment to the same Office, to take such Oath or make such Affirmation more times than one. (Sec. 8.)

14. Where, in any Oath under this Act, the name of Her present Majesty is expressed, the name of the British Sovereign, for the time being, shall be substituted from time to time. (Sec. 9.)

15. When an Oath is required to be taken under this Act, every person for the time being by law permitted to make a solemn Affirmation or Declaration, instead of taking an Oath, may, instead of taking such Oath, make a solemn Affirmation in the form of the Oath hereby appointed, substituting the words "Solemnly, sincerely, and truly, declare and affirm," for the word "swear," and omitting the words, "so help me God." (Sec. 10.)

16. A careful consideration of the Commission and Oaths will shew how paramount and binding are the obligations of a Justice of the Peace to be loyal and faithful to his Sovereign, not merely as an ordinary subject, but also as one bound by the solemn sanctity of an Oath to a special obligation, and one on whom the Representative of the Sovereign, reposing confidence in his loyalty, integrity, and ability, has conferred special power and authority. The Commission requires you diligently to apply yourself to do your duty, and as you cannot do it without knowing how to do it, it is to be hoped that a careful study of this

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little work may in some small degree assist you; for your own credit and honor, and by your Oath, you are required to do your duty whilst you hold the Queen's Commission; and I may add, that if you refuse to do it, you may be compelled by a Writ of Mandamus (a) from the Supreme Court, to do what the Law imposes on you as a duty; and in cases where you refuse to do any act relating to your office, you may be compelled to do it by another proceeding called a Rule Nisi (b) of the Supreme Court; (c) you must not allow any consideration, whether political, sectarian, or personal, to interfere in any way whatever with your Magisterial duties; you must have no regard to any man's position in society, but you must do, as your Oath compels you to do, equal justice to rich and poor. "You shall not be of Counsel of any quarrel hanging before you," means that you must hear *both sides*, not prejudge the case or take up one side of any dispute that may be brought before you.

17. You must also be careful not to try or take any part in the adjudication of any case in which you are *pecuniarily interested*, (d) either *directly* or *indirectly*.

(a) "*Mandamus*," from the Latin, means "*we command*." Whenever a duty is cast upon a Justice, the Law requires that he shall promptly fulfil it; and if being properly requested to perform an act within the scope of his authority as a Justice, he without any sufficient reason declines to do so, the Supreme Court, (*) on application for the purpose, will interpose to compel him to do his duty.

For further information refer to Oke, p. 46 & 47, 48 & 49, where the cases are given where a *Mandamus* issued and also where a *Mandamus* was refused, and under title "*Mandamus*" in this Manual.

(*) *Sup. Court* has all the authority of Queen's Bench, &c.

(b) From the Latin word "*Nisi*," unless, because the Rule concludes with the words, "*unless* cause to the contrary be shewn within ——— days."

(c) See Rule Nisi on Justices, and also stating a case for opinion of Supreme Court.

(d) No Justice of the Peace, however duly authorized, in all other respects can act judicially in a case wherein he is himself a party, or wherein he has any direct or indirect pecuniary interest (either as principal or agent) however small. The principle of Justice that "*no one can be a Judge in his own cause*," pervades every branch of the Law, and is as ancient as the Law itself. Oke, p. 29, &c.

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18. I know it is a difficult matter for an Outharbor Magistrate to keep clear of all the petty jealousies, quarrels and disputes that naturally arise in all small communities, but if you act with common sense, prudence and good judgment, and are rigidly impartial in your decisions, you will manage it, and gain the confidence and respect of the community in which you reside. You should also specially avoid being a political partizan; you have a perfect right to hold your own individual opinions, both in political and other matters, and you have a right to express them privately as an individual, but you should be specially and particularly careful never to permit your political or your religious bias to interfere, in any way whatever with your impartiality and independence as a Magistrate. You must not take a part in any political contest.

19. You must make accurate and regular returns quarterly (*a*) (each quarter ending on first day of January, April, July, and October,) of all (*b*) fines, fees, and other moneys you are required by Law to return to the Receiver General, where there is no Clerk of the Peace to do this duty, (*c*) and where there is a Clerk of the Peace, you should revise and certify his returns.

20. The words "you shall not *let* (*d*) for gift, &c.,"

(*a*) Consol. Stat.

(*b*) Fines—except in some special cases, referred to hereafter, half of the fine is paid to the Informer, the other half to the Receiver General.

(*c*) Consol. Stat.—Where there is no Clerk of the Peace, a Justice or Stipendiary Magistrate may perform his duty.

(*d*) See Webster's Dict., word "let."

Nature of the Duties of Justices of the Peace.

means you shall not delay or put off a cause for a bribe; *let* is an obsolete word, the original meaning was to retard. For the honor of our Judiciary, both great and small, the crime is now as obsolete as the word.

21. Lastly, all Warrants and other Process must be executed by Constables, &c., never by persons interested.

THE NATURE OF THE DUTIES OF.

JUSTICES OF THE PEACE.

SECTIONS

1. Authority, either Ministerial or Judicial.
2. Judicial functions.
3. Ordinary Jurisdiction.
4. Justices to have same jurisdiction as Justices in England.
5. Jurisdiction in absence of Stipendiary Magistrate.

SECTIONS

6. Criminal jurisdiction of Justices in absence of Stipendiary Magistrate.
7. Powers of Stipendiary larger than English Stipendiary Magistrates.
8. Examples of Power in Criminal cases.

1. The authority of Justices of the Peace is either *ministerial* or *judicial*; the *ministerial* functions of Justices consist of receiving informations or complaints for indictable offences which can only be tried by a jury in the Supreme Court or the Supreme Court on Circuit; also, for offences or matters triable in a summary manner, causing the party charged to appear and answer, either by Summons or Warrant; levying rates under the Sheep Killing Act, and many other Acts of the same character;—these are the *ministerial* functions of Justices of the Peace, as distinguished from their *judicial* functions.

2. Their Judicial functions chiefly consist: *first*, of the trial of offenders under their summary jurisdiction in small

Nature of the Duties of Justices of the Peace.

Criminal cases; *second*, adjudicating or deciding cases such as between master and servant, in the fishery, and many other civil actions of a similar character, the first being called their *Criminal* jurisdiction, whilst the second is described as their *Civil* jurisdiction. Committing for trial in Indictable offences, and taking Bail, are Judicial duties. The Magistrate's decision in these cases is not final, but it is, nevertheless, a judgment on the questions whether the prisoner shall stand his trial or be discharged. Taking Bail is also Judicial. It is often optional, and the Magistrate has to adjudge whether the prisoner shall be kept in gaol or allowed out on bail; also what the amount of the security shall be.

3. The ordinary jurisdiction of Justices of the Peace, under the English Criminal Law, as applied to this Colony, is given to Justices of the Peace in Newfoundland by the Section following:—

4. "Justices of the Peace shall have and exercise, in proceedings of a criminal or other nature, the like powers, authorities, and jurisdiction, where the same shall not be inapplicable, as Justices of the Peace in England may now or hereafter by law exercise there, except as may be otherwise provided by Local enactment."—(Consol. Stat.)

5. Justices of the Peace in Newfoundland have, besides this ordinary jurisdiction, special powers conferred on them. By the Consolidated Statutes: "In all places where there shall be no resident Scipendiary Magistrate, or where he shall be absent, any Justice of the Peace, in or near the locality, shall and may perform and exercise all

Jurisdiction of Justices of the Peace.

the functions, powers and authorities which are or might be exercised or performed by a Stipendiary Magistrate, under the provisions of these Consolidated Statutes."

6. It is also provided that "Any such Stipendiary Magistrate shall also have and exercise the like power, authority and jurisdiction, in the hearing and determining of summary proceedings on complaints, and the carrying out of any conviction thereon, as any two or more of Her Majesty's Justices of the Peace now or hereafter may exercise under any Law that may be in force in this Colony, and shall have the same power and authority to require and compel the attendance of witnesses."

JUSTICES OF THE PEACE

JURISDICTION OF AS TO LOCALITY, &C.

SECTIONS

1. Justice's power confined to his District in certain cases—Proviso and exception—Meaning of the word Colony, &c.—Stipendiary Magistrates on the Treaty Shore.
2. Central District defined.
3. Northern District.
4. Southern District.
5. Labrador.
6. Warrant may issue for offence committed within jurisdiction, no matter where offender resides in the Colony.

SECTIONS

7. Indictable offences on the High Seas in British Ships.
8. Accessories.
9. Offences in British Ships.
10. Larceny.
11. Larceny from wrecks.
12. Where title to land involved.
13. In assault, example.
14. Under Malicious Injuries Act.
15. Course to be pursued in such cases.

1. A Justice of the Peace is generally appointed for one of the three Judicial Districts into which this Colony is divided, or for the Labrador; and his power and authority, except in special cases, which will be referred to hereafter, is confined within the District named in his Commission;

Jurisdiction of Justices of the Peace.

he cannot exercise any coercive or judicial act out of the District for which he has been appointed (a); it will be necessary therefore first to define the limits of each Judicial District (b).

2. The Central District includes all settlements in the peninsula of Avalon, lying between an imaginary line drawn from the LaManche River, inclusive, to Holyrood in Conception Bay, exclusive, and includes Belle Isle, and the adjacent Islands in Conception Bay.

3. The Northern District comprises and includes all that portion of the Island, and the Bays and Rivers of the same, and the Islands in or adjacent thereto, and depend-

(a) This proviso, however, must be borne in mind (Consol. Stat., new series, p. 595). Persons charged with offences before a Magistrate or Justice in one District may be committed for trial in the Supreme Court in any other District, or may, although committed in or to one District, be indicted and tried in another, as justice and convenience may require, and a person may be charged in one place or District and the investigation continued, and commitment, if any, made in another place or District; and for such purposes Magistrates and Justices shall exercise all necessary powers of removal and examination of witnesses, and for the purposes of this section shall be regarded as Magistrates for the Colony and its Dependencies, and for all places and Districts within this Colony and its Dependencies. (This section refers to indictable offences triable before the Supreme Court, not to cases which the Magistrate may try summarily). I may mention—that by the Consol. Stat., "Colony," or "the Colony," or "this Colony," means Newfoundland and all Islands adjacent thereto, also Labrador and all Islands adjacent thereto. "Newfoundland," or "the Island," or "this Island," is held to include Newfoundland and the Islands adjacent thereto. Newfoundland and its Dependencies mean our Island and Labrador.

Stipendiary Magistrates on the Treaty Shore (from Cape Ray to Cape John) shall have all the jurisdiction, power and authority of District Judges, and in all actions *ex contractu* the said Magistrates shall have jurisdiction to the amount of Two Hundred Dollars.

APPEAL.—Appeal from the judgment of such Stipendiary Magistrates (on the Treaty Shore), in all civil cases where the amount exceeds \$40, to the Supreme Court in St. John's or on Circuit. The Magistrate may require security for payment of claim and costs. Supreme Court may prescribe rules for regulating such appeals.

See Stones' Jus. Manual, p. 477.

(b) For fuller information, see notes. E. M. Archibald's Digest, pp. 55 & 56.

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ent on the Government thereof, situate and lying between the Northern and Western limits of the Central District, and Cape Norman in the Straits of Belle Isle, inclusive of the Settlements contiguous to the said Cape.

4. The Southern District comprises and includes all that portion of the Island, and the Bays and Rivers of the same, and the Islands in or adjacent thereto, and dependent on the Government thereof, lying and situate between Cape Norman, aforesaid, and proceeding by the Western, Southern and Eastern shores to the La Manche River aforesaid.

5. Labrador is thus defined in the Governor's Commission: "All the Coasts of Labrador, from the entrance of Hudson's Straits to a line to be drawn, due North and South, from Anse Sablon on the said Coast to the fifty-second degree of North Latitude, and all the Islands adjacent to that part of the said Coast of Labrador, as also of all forts and garrisons erected and established, or which shall be erected or established within or on the Islands and Coast aforesaid. (a)

6. Whilst the general rule holds good that the Justice's jurisdiction is in general confined to the District named in his Commission, (b) there are certain cases in which his

(a) The Imperial Act, 49 Geo. 3, C. 27, S. 14, annexes to the Government of Newfoundland, the Island of Anticosti, and the Coast of Labrador to the River St. John, but by the Imperial Act 6 Geo. 4, C. 59, S. 9, this Island and part of the Labrador is reannexed to Canada, and the boundary of so much of Labrador as remains subject to the Government of Newfoundland, is defined in accordance with the Governor's Commission as given above.

(b) Some Stipendiary Magistrates and some Honorary Magistrates are Justices of the Peace for the Island of Newfoundland and its Dependencies: in that case their jurisdiction extends over Newfoundland and Labrador. All the District Judges have such jurisdiction, *ex officio*. Stipendiary Magistrates have also extensive jurisdiction under the Bait Act.

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jurisdiction is more extended; for instance, Justices are authorized to issue a Warrant (a) to apprehend and to commit for trial any person charged on oath before them with having committed an (b) indictable offence *within* their jurisdiction, no matter where such person shall reside within the Colony and its Dependencies. (c)

7. The Justice is also authorized to issue his Warrant for the arrest of any one who has committed an indictable offence on the high seas, in a British ship, when the offender comes within the Justice's jurisdiction. (d)

8. All accessories (e) to any felony may be tried in the same manner as the principal criminal.

(a) See Forms of Warrant in Appendix of Forms.

(b) 11 & 12 Victoria, C. 42, S. 1, (Imperial Act), Oke, p. 21. The meaning of the word *Indictable* is explained in a subsequent Chapter; see index, under head *Indictable*.

(c) The course to be pursued, when the offender has left the District, is to send the Warrant by one of your Constables to a Magistrate residing nearest to where you believe offender is; the Constable then can swear to your signature—on proof of your signature the other Magistrate backs your Warrant, (see Backing Warrants), and the Warrant then holds good for all the District over which the Magistrate backing the Warrant has jurisdiction. You would, of course, only send your Constable in important cases, and where it was necessary for him to identify the offender. In ordinary cases of assault, and in bastardy cases, the practice is to send the Warrant by post to the Magistrate residing nearest to where offender is, and generally there is some one who can prove the signature and identify prisoner.

(d) A British ship is in law part of the Territory of the United Kingdom, and all on board are at all times and in all places, subject to English Law. This is the general principle. This special power is given by Statute, (see *Arch. Crim.* p. 30 & 31).

(e) ACCESSORIES.—An accessory is a person who is not the principal actor in a felony, nor even present at its perpetration; but who is in some way concerned either *before* or *after* the fact. An accessory *before* the fact is one who procures or counsels another to commit a crime, he himself being absent. An accessory *after* the fact is a person who knowing a felony to have been committed, receives, protects, or assists the felon. In sudden unpremeditated crimes, there can be no accessories *before* the fact. There are no accessories in crimes under the degree of felony, and there are no accessories in treason. The word *Felony* is explained in the Chapter on Criminal Law.

For fuller information about accessories, see *Kerrs. Blac.* 445.

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9. All offences whatsoever, committed in British ships at sea, or by British subjects in a foreign ship, may be taken cognizance of by a Justice of the Peace residing at any port or place where such vessel shall arrive, in the same manner precisely as if the offence were committed (a) within the Justice's District.

10. Larceny (which means stealing) may be dealt with in any District where the offence was committed, or in any District through or into which the stolen property may have been carried by the thief; or if stolen in one District and in the possession of the thief in another, in either District. (b)

11. Larceny from wrecks may be *tried* either in the District where the offence was committed, or in the District next adjoining; the word *tried*, all through this Chapter, only means that you are to arrest the guilty parties as soon as you can, and take the examination of the witnesses, &c., as explained in the Chapter on Indictable offences. (c)

12. In all cases where property or title to land is in question, Justices of the Peace have no jurisdiction to try and determine the case in a summary manner.

13. This question may arise in a case of assault; for example: John Snow is in possession of land; William

(a) Oke, 851, 852. Notes.

(b) Oke, p. 24.

(c) For further information on this subject, see *Archibald Crim. Pleading*, from p. 25.

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Brown, putting up a new fence on the land adjoining, comes in on the land Snow claims. Snow tells him not to put up the fence there, and not to come in on the land; Brown persists in coming in on the land and in putting up the fence; Snow forcibly removes him off the land without unnecessary violence, and without committing a breach of the peace, and probably knocks down the fence. (a) Now, in this case, if the Justice found that Snow was in *possession* of the land he claimed for some considerable length of time, or had honestly some claim on it, he would be bound to dismiss the case on those facts being shewn to his satisfaction; he could not try the question as to which of the two, Brown or Snow, had the better title to the land.

14. A case of this kind may also arise under the Local Malicious Injuries' Act, and under the Imperial Malicious Injuries' Act. For instance, if Snow were to cut down a fence or a gate which Brown had placed on land which Snow claimed; if the same claim were honestly set up as in the former case, he could not be tried by the Justice, either under the Local or Imperial Act. "Whenever this question of title is raised, the Justice must determine from all the facts and circumstances of the cases, whether the Defendant *produces evidence or not*, whether the claim of right set up in himself or those under whom he claims

(a) See Ouster of Jurisdiction and excess of force or violence, under title, *Practice* Post.

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to act is made *bona fide*, that is in good faith, and with a show of reason." (a)

15. I would advise the Justice, in all cases where it is practicable, to determine this question, without going further into the facts of the case than is a solutely necessary for him to arrive at a decision whether the question of title is *bona fide raised*, or not—as it would be obviously out of place for him to hear the whole case, and then, after all the time and labor bestowed on it, find at the end that he had no right to deal with the case at all. (b)

(a) Oke, p. 33, 36.

(b) I have gone fully into this question of title, and have endeavored to make it as clear and intelligible as I possibly could in the limits of this small work. I have done so because I am aware that much misapprehension exists concerning the subject, and cases are constantly arising before Outport Magistrates in which this question is involved. The present state of Law on this subject requires some change. Land in England or Ireland is considered almost a sacred thing, and its tenure is complicated. In this country, especially in Outharbors, it is of very small money value generally, and the title to land is simple. A receipt for the purchase money in which the particular land is identified, passes the seller's title to the purchaser, no matter what its value. Generally speaking, 20 years' undisturbed possession is good against all the world, except the Crown. 60 years' good against the Crown. A Government grant is equivalent to 60 years' possession. The Registration Law is simple. Under our present Law an honorary Magistrate might try a wages case that involved any amount, but the smallest dispute about land not worth ten shillings can only be tried before the Supreme Court, either in St. John's or on Circuit, and at such cost that it practically operates as a denial of justice to a poor man.

ACTIONS AND OTHER PROCEEDINGS AGAINST JUSTICES.

SECTIONS

1. Observation on Act for protection of Justices.
2. When Justices liable to an Action.
3. Acts done with jurisdiction.
4. Acts done without jurisdiction.
5. Against whom Action to be brought.
6. Rule when discretionary power is given to a Justice.
7. Rule Nisi of Supreme Court when Justices refuse to act.
8. No Action where conviction or order confirmed on appeal.
9. Judge may stay proceedings where Action prohibited.
10. Actions to be commenced in six months.
11. One month's notice to be given.
12. Venue not applicable.
13. Defendant under general issue may give special matters of defence in evidence.
14. Tender and payment into Court.
15. Nonsuit.
16. Damages.
17. Costs.
18. Mandamus.
19. Proper course to state a Case, when Justice's decision erroneous.
20. Mandamus disused; Rule Nisi instead.

SECTIONS

21. CERTIORARI.
22. Certiorari defined.
23. No special Law required.
24. Difference between Certiorari and Appeal.
25. Effect of express words taking away Certiorari; Attorney General's right, &c.
26. No Certiorari whilst Appeal depending.
27. Purpose of Writ; getting Justice's defective order quashed.
28. Not to be quashed for want of form.
29. When jurisdiction shewn on face of conviction, cannot enquire as to soundness of conclusion.
30. When conviction good on face, no evidence received to contradict it.
31. Must be sued out within six months—notice—security.
32. How return made to Certiorari by Justice.
33. Words, "nor be removed by Certiorari," does not take away right to state a case.
34. HABEAS CORPUS.
35. Rule Nisi for Habeas Corpus.
36. Amendments after issue of Rule Nisi.
37. Criminal Information or Indictment against Justices.

1. Whilst Justices of the Peace are obliged by Law to perform the various duties imposed upon them, they are very properly protected from vexatious actions for acts done by them in the execution of 'heir office. A heavy responsibility is imposed upon them, however, when they either wilfully or negligently transgress the bounds of their authority. The principal Act for the protection of Justices is the Imperial Act, 11 & 12 Victoria, Cap. 44, which

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has now become part of the Law of this Colony, (a) and a summary of all parts of which, applicable to the Colony, is given in this Chapter.

2. "The general rule of Magisterial responsibility is this: if a Justice has *jurisdiction* over the subject matter laid before him, and acts judicially, he is not liable to an action for any act done within it, however erroneous the conclusion at which he arrives may be." The great point, therefore, for a Justice to consider, in all cases, is,—“Have I *jurisdiction* in the matter?” “But in cases either in which he has not jurisdiction, or exceeds it, (b) he will be liable to an action for damages to the party aggrieved”—Oke. p. 38.

IMPERIAL ACT, 11 & 12 VICTORIA, CAP. 44.

PROTECTION OF JUSTICES FROM VEXATIOUS ACTIONS, &c.

3. ACTS DONE WITH JURISDICTION.—Every action against a Justice for any act done in the execution of his duty with respect to any matter within his jurisdiction, must be by an action on the case, as for a tort, and the declaration expressly allege that the act was done maliciously and without reasonable and probable cause [see *Basebe v. Matthews*, 16 L. T. (N.) 417], and if at the trial such allegation be not proved the plaintiff shall be nonsuit, or a verdict given for the defendant. [11 & 12

(a) Consol. Stat. p. 652.

(b) Exceeding jurisdiction in some cases may mean not only where there is an absence of jurisdiction in fact over the case, but also where some Statutable or formal requisite has been omitted, if such requisite be an essential ingredient.—(Oke. p. 39.)

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Vict., c. 44, s. 1; *Taylor v. Nesfield*, 23 L. J. 169, and *Walker v. S. E. Railway Co.*, 23 L. T. (N. S.) 14.]

4. ACTS DONE WITHOUT JURISDICTION.—For any act done by a Justice in a matter of which he has not jurisdiction, or in which he has exceeded (a) his jurisdiction (see *Ratt v. Parkinson*, 20 L. J. 208), an action may be maintained without an allegation that the act was done maliciously, and without reasonable and probable cause; but no action shall be brought for anything done under a conviction (b) or order until after the same shall have been quashed either upon appeal, or by the Supreme Court; nor for anything done under a Warrant to procure the appearance of a party, and which shall have been followed by a conviction or order, until after the same shall have been (c) quashed (see *Bessell v. Wilson*, 20 L. T. 233); or if the warrant were not followed by a conviction or order, or if it were a warrant upon an information for an alleged indictable offence, and a summons were previously served and disobeyed, then no action can be maintained against the Justice.—(*Id.* s. 2.)

(a) Where Justices signed a conviction and commitment in which blanks were left for the costs, the conviction was afterwards quashed on appeal, and an action for false imprisonment commenced, it was held that this was not an excess of jurisdiction, but a mere irregularity. (*Bott v. Ackroyd*, 28 L. J. 207.)

(b) Conviction may be amended even after action brought against the Justice. A defendant is entitled, upon application, to a copy of the conviction from the convicting Justice; but the Justice is not bound by the copy he has delivered. *Oke*, p. 39.

Conviction is the formal judgment of the Justices, under their summary jurisdiction in Criminal cases, when reduced to writing under their hands and seals: as to the difference between orders and convictions, see *Paley*, 5th Ed. 159 et. seq.

(c) The effect of the 2nd and 8th sections of this Act is, that the conviction must be quashed before the injured party can commence an action, and that the action must be commenced within six months after the act complained of. It may frequently occur that the conviction cannot be quashed in sufficient time to allow of an action being commenced within the prescribed period.

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5. AGAINST WHOM ACTION TO BE BROUGHT.—Where a conviction or order shall be made by one or more Justices, and a warrant of distress or commitment granted thereon by some other Justice, *bona fide* and without collusion, no action to be brought against the Justice who granted such warrant, by reason of any defect in the conviction or order, or for want of jurisdiction in the Justice who made the same, but the action must be against the Justice or Justices who made the conviction or order. (*Id.* s. 3.)

6. DISCRETIONARY POWER.—In all cases where a discretionary power shall be given to a Justice by any Act, no action shall be brought against him for or by reason of the manner in which he shall have exercised his discretion, in the execution of any such power. (Sec. 4.)

7. REFUSAL OF JUSTICES TO ACT.—In all cases where Justices shall refuse to do any (a) act relating to the duties of their office, it shall be lawful for the party requiring such act to be done to apply to the Supreme Court, upon an affidavit of the facts, for a rule calling upon such Justices, and also the party to be effected by such act, to show cause why such act should not be done; and if, after service of such rule, good cause shall not be shown against it, the said Court may make the same absolute, with or without or upon payment of costs, and the

(a) If Justices have refused to hear an application for a summons for an indictable offence, or if after hearing they refuse to grant it from a mistaken view of their duty, the court will grant a *mandamus*, but not, it seems, where they have heard and determined the application, and on the merits have declined to grant it. [*R. v. Fawcett*, 19 L. T. (N.) 396, and *re Lee*, 21 L. J. (M. C.) 112.] This provision is called in the English Text Book a substitute for a Writ of Mandamus.

Actions and other Proceedings against Justices.

said Justices, on being served with such rule absolute, shall obey the same and shall do the act required; and no action shall be commenced or prosecuted against such Justices for having obeyed such rule and done such act so thereby required as aforesaid. (*Id.* s. 5. See *R. v. Paynter*, 26 L. J. 102; *R. v. Dayman*, 26 L. J. 128; *R. v. Brown*, 26 L. J. 183; and *Re Hartley*, 31 L. J. 232.)

8. No action to be brought against Justices for anything done under a warrant of distress or commitment upon any conviction or order which shall be confirmed on appeal. (*Id.* sec. 6.)

9. And a Judge may stay the proceedings in any action where such an action is prohibited. (*Id.* s. 7.)

10. Every action must be commenced within six calendar months after the act complained of. (*Id.* s. 8.)

11. One calendar (*a*) month's notice, in writing, must be given to the Justice before an action can be commenced against him. (*Id.* s. 9.)

12. VENUE.—The next Sec., 10, refers to the bringing of Actions in the Court (*b*) within the District of which the act complained of was committed. This would have no reference here, as such Actions would always be taken

(*a*) Calendar month means from a given date in one month, to a given date in another month.—(*Oke*, p. 40.)

(*b*) This Section also refers to Actions being brought in County Courts, (here District Courts), and to the Justice's power to object to having his case tried there. A similar provision is contained in the District Court Acts; but as a matter of practice such Actions would never be tried in a District Court.

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in the Supreme Court, which has jurisdiction over the Colony. (Sec. 10.)

13. GENERAL ISSUE.—Sec. 10 also provides, that the Defendant may plead the general issue, and give any special matters of defence, excuse or justification, in evidence, under such plea at the trial. (Sec. 10.)

14. TENDER AND PAYMENT INTO COURT.—The Justice may tender any sum of money which he may think fit, as amends for the injury, and may pay money into Court. (Sec. 11.)

15. NONSUIT.—This section enumerates the various cases under which the Plaintiff will be nonsuited, if action not brought within the six months, or month's notice not given, or if he shall not prove the cause of Action stated in such notice, &c. (Sec. 12.)

16. DAMAGES.—Where the Plaintiff shall be entitled to recover, and shall prove the levying or payment of any penalty or sum of money, under any conviction or order, as parcel of the damages he seeks to recover, or that he was imprisoned under such conviction or order, and seeks to recover damages for such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond two-pence for the imprisonment, or any costs, if it shall be proved that he was actually guilty of the offence of which he was convicted, or that he was liable to pay the sum so ordered, or, with respect to such imprisonment, that he had undergone no greater punishment than that assigned by law for the of-

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fence of which he was convicted, or for non-payment of the sum so ordered. (*Id.* s. 13.)

17. COSTS.—If the Plaintiff obtain a verdict, or the Defendant (the Justice) allow judgment to pass against him by default, the Plaintiff is entitled to costs as before the act; but if it be stated on the proceedings that the act complained of was done maliciously and without reasonable and probable cause, the Plaintiff is entitled to costs as between Attorney and Client; and in every action, if the Justice obtain judgment upon verdict or otherwise, he is entitled to costs as between Attorney and Client. (*Id.* s. 14.)

18. MANDAMUS.—This high prerogative Writ, which can issue from the Supreme Court, or the Supreme Court on Circuit, is directed to the Judges of inferior Courts of Judicature, Corporations, Public Bodies, and others, upon whom the Law casts a public duty, alleging that complaint has been made of their refusal to perform that duty upon some particular occasion, and commanding them in the Queen's name to do it. Mandamus applies to every class of duty coming within the scope of the Justice's functions. If a matter is properly brought under the notice of Justices, and they have jurisdiction, they cannot decline to interfere, but must, to the best of their judgment, adjudicate upon it. A mandamus will lie when they decline to enter upon an enquiry, but not when, having entered upon the enquiry, they arrive at a *conclusion*, however erroneous it may be.

19. The proper course to adopt, where their decision is

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erroneous, is to proceed by Rule to state a case under 20 & 21 Victoria, Cap. 43, Sec. 5, which I shall refer to hereafter.

20. In most of the ordinary cases before Justices, the practice now in England, instead of mandamus, is to proceed under the Imperial Act, 11 & 12 Victoria, Cap. 44, (before noticed), by Sec. 5 of which Act a Rule Nisi can be taken out of the Supreme Court calling upon the Justice, and also the party affected by such act, to shew cause why such act should not be done.

21. CERTIORARI, from the Latin, means *to be certiorated, or more fully and accurately informed of*. The Supreme Court has a general superintending power over all Courts of inferior jurisdiction, and having all the power and authority, not only of the Queen's Bench, but also of the Common Pleas, High Court of Chancery, &c., has this power, both in Civil and Criminal business, and can exercise its jurisdiction, where interference is necessary, to restrain the proceedings of inferior Tribunals, through the Writ of *Certiorari*.

22. HABEAS CORPUS, (Latin), *Have the body*. There are several Writs of *Habeas Corpus*; the only one, however, with which Justices of the Peace are likely to be concerned is called *Habeas Corpus ad Subjiciendum*, (Latin), means, that *you have the body to answer*. "When a prisoner is in actual custody, upon a Warrant from a Justice upon a conviction or order, and being desirous to test its validity, he will apply to the Supreme Court by Affidavit for a Writ of *Habeas Corpus*, which, if sufficient ground be

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shewn to lead the Court to believe that the imprisonment was illegal, will at once be granted."

23. Sometimes a *Rule Nisi* is issued, and the Justices must have notice served on them of the application, and also of the return of the Writ, so as to enable them to support their commitment before the Supreme Court. It is important for them, personally, to attend to it, as an action against them for damages would be the probable result of successful application for a Writ of *Habeas Corpus*.

24. Where a *Rule Nisi* is issued in the first instance, it appears that an unsealed Warrant may be cured by the substitution of a new Warrant, sealed, after service of a Rule for a *Habeas Corpus*. (a) After the Return to the Writ is put in Court, and read, it is said to be *filed*, the Court may still amend it, (the Return), but the commitment cannot be amended. (b)

25. CRIMINAL INFORMATION OR INDICTMENT AGAINST JUSTICES.—When the misconduct of Magistrates, besides being productive of private injury to individuals, calls for punishment on public grounds; when they act from private resentment, or interest, or from partial, malicious and corrupt motives, the Supreme Court will, on sufficient grounds being laid before it by Affidavits, cause a proceeding, called a Criminal Information, to be filed by the Clerk of the Court, against them, or they may be proceeded against by Indictment. (c)

(a) Oke, p. 54. Note.

(b) Paley on Convictions, 319. Commitment is the order in writing under the hand and seal of the convicting justice, directed to a Constable, and to the Keeper of the prison to which the party is to be committed. For further information under head Commitment, see *Paley*.

(c) Oke, p. 55, *Paley* on Convictions, 482.

STATING A CASE.

There are many ways by which the decisions of Magistrates can be brought under the review of the Supreme Court by Mandamus, Certiorari, Rule Nisi, and lastly, by "Stating a Case for the opinion of the Supreme Court;" all these modes differ from appeal in this important point; appeal raises the whole question before the Superior Court of law and facts; the other proceedings only apply to the legality of the Magistrate's method of dealing with the case. "Stating a Case" is the simplest and most convenient form of bringing the legality of the Magistrate's proceedings under review, and is the method now almost universally adopted in England. The first Act, 20 and 21 Vic., Cap. 43, contained the following provision:—

"After the hearing and determination by a Justice or Justices, of any information or complaint, which he or they have power to determine in a summary way by any law now in force, or hereafter to be made; either party to the proceeding before the Justice may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing, within three days after the same, to the Justice or Justices, to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Supreme Court."

By the Summary Jurisdiction Act of 1879 the scope of the Act is greatly enlarged. Sec. 1 of the new Act is as follows:—

"1. Any person aggrieved, who desires to question a



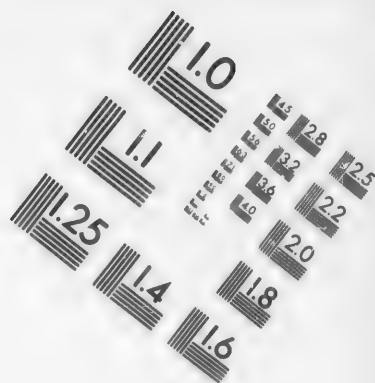
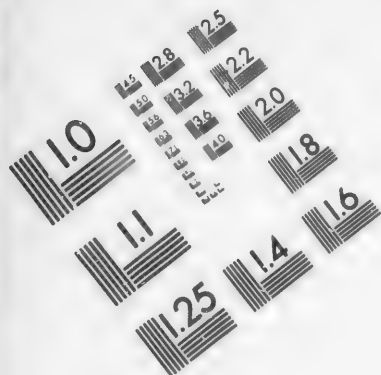
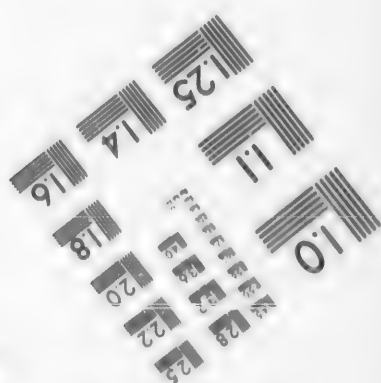
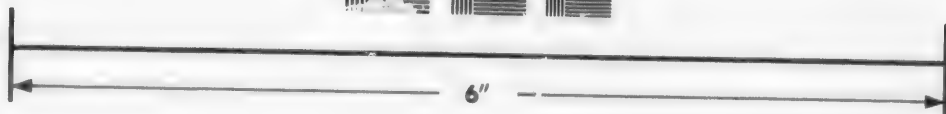
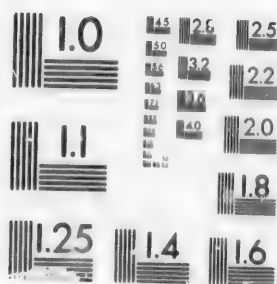


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conviction, order, determination, or *other proceeding* of a Court of Summary Jurisdiction, on the ground that it is *erroneous in point of law, or in excess of jurisdiction*, may apply to the Supreme Court to state a special case, setting forth the facts of the case, and the grounds on which the proceeding is questioned, and if the Court decline to state the case, may apply to the Supreme Court for an order requiring the case to be stated."

These general words will include nearly every case which comes under the Summary Jurisdiction of Magistrates; it is held to include the refusal to make orders, &c. The Superior Court (here the Supreme Court), may make rules prescribing the times for Stating the Case. One of these rules, made by the Superior Courts in England, contain the following. Application to Justices to state a special case, shall be in writing, and may be made at any time within seven days after the date of the proceeding to be questioned, and the case shall be stated *within three calendar months* after the application (not a very prompt and summary proceeding). Notice in writing of the appeal, and copy of the case, must be given by the applicant for the case called the "Appellant" to the opposite party called the "Respondent," within three days, is the time mentioned in the original Act, but this may be altered by rule of the Supreme Court. This Act affords great protection to Justices, as, after Stating a Case, they are not liable to any costs in respect, or by reason, of an appeal, and they may, without risk of an action, enforce their conviction or order after the decision of the Supreme Court, affirming or amending the same has been made. Justices will do well to act on their own judgment whether

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applications to State a Case are frivolous. Cases are not to be granted unless some point of law, or some question of jurisdiction, is raised. The case may be sent back by the Supreme Court for amendment. The Supreme Court can, at any time on application, order the Justice to State a Case, and the Attorney General has the right, by the Statute, to order a case.

1. DECISIONS TO BE FINAL.—The Court to which a case is transmitted under this Act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the Justice, with the opinion of the Court thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as to the Court may seem fit; and all such orders shall be final and conclusive on all parties: Provided always, that no Justice of the Peace who shall state and deliver a case in pursuance of this Act shall be liable to any costs in respect or by reasons of such appeal against his determination.

2. JUSTICES MAY FILE AFFIDAVIT.—The Imperial Act, 35 & 36 Vic., Cap 26, is an amendment of this Act, 20 & 21 Vic., Cap. 43, and therefore applicable to the Colony. Its preamble recites that, "whereas *ex parte* proceedings are frequently taken in the Superior Courts to bring under review the decisions of Justices, and there is no fund at the disposal of such Justices to defray the expenses of appearing by Counsel to support their decisions. And whereas it is expedient that such Justices should, without expense to themselves, have an opportunity in such cases

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of informing the Court of the grounds of their decision and of all material facts bearing upon the same." Sec. 2 provides,—“Whenever a decision of a Justice is called in question by a rule to show cause or other process issued on an *ex parte* application, such Justice may make and file (without fee) in such Court an affidavit, setting forth the grounds of the decision brought under review, and any facts he may consider to have a material bearing upon the question at issue.” The affidavit may be sworn before a Commissioner of Supreme Court and forwarded to Chief Clerk Supreme Court, by post, for the purpose of being filed. “The Court, before making the rule absolute or otherwise determining the matter so as to overrule or set aside the acts or decision of the Justice, shall take into consideration the matter set forth in the affidavit, notwithstanding that no Counsel appears on behalf of the Justice.”

3. AMENDMENT OF CASE.—The Court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended. (20 & 21 Vic., c. 43, s. 7.)

4. WARRANTS TO ENFORCE DECISION.—After the decision of the Supreme Court in relation to any case stated for their opinion under this Act, the Justice in relation to whose determination the case has been stated, or any other Justice of the Peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order which may have been affirmed, amended, or made by such Supreme Court, as the Justice or Justices

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who originally decided the case would have had to enforce his or their determination, if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the Justice or Justices for enforcing such conviction or order, by reason of any defect in the same respectively.

5. CERTIORARI NOT REQUIRED.—No Writ of *Certiorari* or other Writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated, under this Act or otherwise, for obtaining the judgment or determination of the Supreme Court on such case under this Act.

6. *Fees to be taken by the Clerk of the Peace, (or by the Magistrate, where there is no Clerk of the Peace.)*

Drawing case and copy, where the case does not exceed 5 folios, of 90 words each.....	\$2.40
When case exceeds 5 folios, then for every additional folio.....	0.24
Recognizance.....	1.20
For every enlargement or renewal thereof.....	0.60
Certificate of refusal.....	0.48

7. FORM OF NOTICE TO JUSTICE.

*To J. S., Esquire, one of Her Majesty's
Justices of the Peace for the ———
District of Newfoundland.*

In the matter of an information (or complaint) wherein the undersigned was (*Informer or Prosecutor or Complainant*) and (*I, the undersigned,*) or A. B., was Defendant,

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heard before and determined by you at ———, in the said District, on the ——— day of ———. Being dissatisfied with your determination in the said case, as being erroneous in point of Law, (or in excess of jurisdiction), I hereby, pursuant to the Statute, make application to you, to state and sign a case, setting forth the facts and grounds of your determination, in order that I may take the opinion thereon of Her Majesty's Supreme Court of Newfoundland.

This ——— day of ———, A. D. 189—.

A. B., (*Compl't. or, &c.*)

Residing at ———, in the said District.

8. FORM OF CASE AND OBSERVATION THEREON.

The Justices, though not bound to grant a case if they are of opinion that the application is frivolous, ought nevertheless to do so when it is shown that the party applying for it raises a point of law or a question of jurisdiction.

With regard to the manner in which a case should be stated, it is to be observed that the Court expects such cases to be submitted to the Judges in a complete form; and cases for the consideration of the Judges under that Act are not to be lengthy narratives of the facts.

A case for the opinion of the Supreme Court, may be stated according to the following form:—

Stating a Case.

NEWFOUNDLAND,

Supreme Court.

Between A. B., Appellant, and C. D., Respondent.	}	This was an information [<i>or, complaint</i>] preferred by — against —, for that, [<i>here state shortly the substance of the information or complaint</i>], and after hearing the parties and the evidence adduced by them, the undersigned, being one of Her Majesty's Justices of the Peace in and for the District of —, did thereupon [<i>set out shortly the adjudication of the Justice</i>]. And the said Appellant, alleging that he is dissatisfied with the said determination, as being erroneous in point of law, (or in excess of jurisdiction), did, within three days thereafter, apply to me, the said Justice, to state and sign a case, setting forth the facts and the grounds of such determination for the opinion thereon of the said Court. Wherefore I, the Justice aforesaid, in compliance with the said request, and in pursuance of the Statute in such case made and provided, do hereby state and sign the following case for the opinion of the said Court.
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CASE.

At the hearing of the said information [*or, complaint*], and on the close of the informant's [*or, complainant's*] case, the said — [*or, the attorney for the said —*] was heard in answer to the matter of the said information [*or, complaint*]; and it being proved on the part of the said — [*the informant or complainant*], that [*here set out the facts which the Justice deems to have been proved, with such objections, &c., of either party, as will raise the point intended to be submitted*], I, said Justice, did adjudge

Stating a Case.

and determine [*set out shortly the adjudication of the Justices.*]

QUESTION.

The question upon which the opinion of the said Court is desired is, whether I, the said Justice, upon the above statement of facts, came to a correct decision in point of law, or had jurisdiction in the matter? and if not, what should be done in the premises? [*Or, the questions of law, arising upon the above statement of facts are ——. Whereupon the opinion of the said Court is asked upon the said questions of law, whether or not I, the said Justice, was correct in my determination as aforesaid? and if not, what should be done or ordered by the said Court in the premises?*]

E. F., J. P. for — District.

9. When the Justice refuses the case as frivolous, he may follow the notice nearly *verbatim* in the third person. Add—

And I, the said Justice, being of opinion that the said ——— application is merely frivolous, have refused to state such case; and at the request of the said ——— I have given him this certificate of the fact, pursuant to the Statute.

J. P. for ———.

JUSTICES OF THE PEACE

THEIR SUMMARY JURISDICTION.

1. Under the English Criminal Law very large powers have been conferred on Justices of the Peace for the examination and punishment of various offences, in a summary manner, that is to say, without the intervention of a Jury; and in all cases where the English Criminal Law is applicable to this Colony and gives a power to Justices to try summarily, Justices of the Peace in Newfoundland can exercise the same powers as Justices in England.

2. Before exercising this summary jurisdiction, however, it is necessary for the Justice to ascertain whether the English Law, which gives the jurisdiction, is applicable to this Colony, and for this purpose he must carefully bear in mind the observations on the application of English Law to this Colony, page 125.

3. The power of Justices of the Peace to try offences summarily, is a power founded entirely upon a special authority, conferred and regulated by Statute; the provisions of the Statute, therefore, in all cases which confer the power must be strictly followed, and jurisdiction must always appear upon the face of the summary proceedings; for instance, under the Local Law giving jurisdiction to try summarily cases of stealing codfish, green or cured, of a value not exceeding twenty dollars, the fish must be described in the Warrant, Conviction and Commitment as "a certain quantity of codfish, *dried or green*, as the case

may be, of the value of \$—," (*must be not exceeding twenty dollars*), value being essential to give summary jurisdiction in such a proceeding.

4. The Acts which principally regulate proceedings in Summary Jurisdiction and orders of Justices, are first the Imperial Act (11 & 12 Victoria, Cap. 12). known also as the Summary Jurisdiction Act of 1848, and as Jervis's Act, it having been framed and introduced by the Attorney General, Sir John Jervis, afterwards Chief Justice of the Common Pleas, the second great measure is the Summary Jurisdiction Act of 1879 (42 & 43 Victoria, Cap. 49). This Act makes most sweeping changes in Summary Jurisdiction, and gives the Magistrate almost unlimited discretion in dealing with cases; it will be found fully set forth with notes in a subsequent chapter, which the Magistrate should carefully study.

5. Jervis's Act simplifies and renders uniform the procedure before Justices relative to summary convictions and orders, prevents technical objections being taken to them, and determines with certainty many doubtful questions; it also gives a table of forms, relating to almost every case which can arise. This valuable Act, which is incorporated into our Local Law (Consolidated Statutes, new series, p. 652), embraces all cases where a Justice has authority to imprison or fine, or otherwise punish, and also all cases where the Justice has authority by Law to make an order for the payment of money. The reader must bear in mind that the Small Penalties Act, and the Summary Jurisdiction in Larceny contained in chaps. 10 & 11 of the first edition of this Manual, are repealed by the Summary Jurisdiction Act, 1879.

Summary Jurisdiction.

6. "The License Laws, and the Laws relating to Master and Servants (*see Chapter on Master and Servants in the fishery*), specially refer to Jervis's Act as regulating the proceedings under these Statutes of the Local Legislature. Malicious injuries to Property should also be tried under its provisions, with the exception, that the action must be commenced within *one month* next after the committing of the injury (*not six months*)."

7. There is a distinction made throughout this Act, which should be borne in mind between a summary conviction and an order. The proceeding to obtain a summary conviction in the first place, is called "laying, or exhibiting an *information*," whilst similar proceedings for obtaining an order of Justice, is called "making a *complaint*."

The practical difference between the two is this: *a summary conviction* is the record of an affirmative judgment upon an information for an offence or act, punishable either by penalty or imprisonment.

An *order* of Justices for the payment of money or otherwise, is also the record of a judgment of Justices upon a complaint for non-payment of a sum of money, or for the neglect to do some other act. (a)

The following analysis of the Act has been compiled principally from Stones' Justices' Manual, portions of the Act which are inapplicable being omitted—the words of the Act are condensed, but the gist of every section is given.

(a) *Paley on Convictions*, 65. *Oke*, p. 113. Note.

ANALYSIS OF ACT.

8. SUMMONS.—In all cases where an information shall be laid before one or more Justices, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such Justice or Justices, for which he is liable upon a summary conviction to be imprisoned, fined, or otherwise punished, and also in all cases where a complaint shall be made to any Justice, upon which he shall have authority to make any order for the payment of money or otherwise, [in which last case the complaint need not be in writing, (a) unless required by some particular Act of Parliament, s. 8], such Justice may issue a summons directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same or such other Justice as shall then be there to answer to the complaint (11 & 12 Vic, c. 43, s. 1); but justices are not to be obliged to issue a summons in any case where the application for any order of Justices is by law to be made *ex parte*. (*Id.* s. 1.) (b)

(a) The License Laws require the information to be in writing, but not on oath.

(b) It is nearly always advisable to take the information in writing and on oath. A warrant, as has been before observed, cannot be issued, except on a sworn information or complaint. The Justice must judge for himself when it is necessary to issue a warrant. Where there is no doubt that the defendant will attend on the summons, only a summons should issue. Where he has to be compelled to attend, and probably will not appear on a summons, or where the offence is a serious or disgraceful one and there is a probability of the defendant running away, a warrant should issue in the first instance. In all cases the Justice must use his own discretion as to which course he adopts—he must take care that his proceedings are not unnecessarily harsh.

Costs.—In all cases, where practicable, the Justice or the Clerk of the Peace should make the complainant pay beforehand the costs of the process to be issued; many very trivial cases are constantly brought before Magistrates, and it often turns out that the party who makes the complaint is really the person most to blame. Compelling payment beforehand will have a salutary effect in keeping many trivial cases out of court.

9. SERVICE OF SUMMONS.—Every such summons shall be served by a constable or other peace officer, or other person to whom it shall be delivered, upon the party to whom it is directed, either personally or by leaving it with some person for him at his last or most usual place of abode. (*Id.* s. 1.)

10. DEFECT IN FORM.—No objection shall be allowed to any information, complaint, or summons, for any alleged defect therein in substance or form, or for any variance (a) between such information, complaint, or summons, and the evidence on the part of the informant; but if such variance appear to the acting justices to be such that the party summoned has been thereby deceived or misled by it, the hearing may be adjourned to some future day. (*Id.* s. 1.)

11. IF SUMMONS NOT OBEYED.—If the person so served with a summons do not appear before the Justice, then, after proof by oath or affirmation of the service of the summons a reasonable time before the time therein appointed, such Justice may, upon oath or affirmation substantiating the matter of the information or complaint, issue a warrant to apprehend the party, or the Justice may proceed to the hearing *ex parte*. (*Id.* s. 2.)

12. WARRANT IN THE FIRST INSTANCE.—Upon such

(a) If there be an irregularity in the summons, and the defendant appears, he must make his objection to it then, or it will be too late (*R. v. Berry*, 23 J. P. 26); the defendant does not, therefore, waive the objection to an irregularity by appearing, but by appearing and not then objecting. A defendant cannot be convicted of a different offence from that stated in the information;—the word "variance" points to some difference between the allegation and the evidence, and not to a different offence.—(*Martin v. Pridgeon*, 28 L. J. 179.)

information being laid as aforesaid for any offence punishable on conviction, the Justice before whom it is laid may, if he think fit, upon oath or affirmation being made before him, substantiating the matter of such information to his satisfaction, issue a warrant in the first instance instead of a summons. (a) (*Id.* s. 2.)

13. FORM OF WARRANT.—Every such warrant shall be under the hand and seal of the Justice issuing the same, and may be directed either to any constable or other person by name, or generally to the constables of the District within which the Justice has jurisdiction, and shall state shortly the matter of the information or complaint, and shall name or otherwise describe (b) the offender, and it shall order the person to whom it is directed to apprehend the offender, and bring him before one or more Justices to answer the charge, and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until it is executed. (*Id.* s. 3.)

14. EXECUTION OF WARRANT.—Such warrants may be executed by apprehending the offender at any place within the District within which the Justice issuing the same has jurisdiction, or in case of a fresh pursuit, at any place in the adjoining District, within seven miles of the border

(a) A warrant remains in force until its execution, and does not become void by the Justice's death. The mode of service directed by this section will be good, although the statute under which the offence is created prescribes some particular mode of service. (16 J. P., 445.) The summons issued by a Justice of one jurisdiction, may, we conceive, be served in any other jurisdiction in the Colony. See also, *ante*, pp. 389 and 390.

(b) A warrant describing the offender as ——— Wilson, of ——— street, in the parish of ———, in the borough of L., shoemaker, whose Christian name is unknown, would be a sufficient identification. (See at J. P. 779.)

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of the first-mentioned District, without having the warrant backed; and where the warrant is directed to all constables or other peace officers within the jurisdiction of the Justice issuing it, any constable or other peace officer of any place within the jurisdiction may execute it in any part of the District within the jurisdiction for which the Justice acted when he granted the warrant, in like manner as if the warrant had been directed to him by name, although the place where the warrant is executed is not within the District for which he shall be constable or other peace officer. (*Id.* s. 3.)

15. BACKING WARRANT.—The provisions of the 11 & 12 Vic., Cap. 42 (*ante*), as to the backing of warrants, are to extend to warrants issued under this Act. (*Id.* s. 3.)

16. DEFECT IN WARRANT.—No objection to the warrant shall be allowed for any alleged defect in substance or form, or any variance between it and the evidence adduced; but if the Justice or Justices shall at the hearing think the party charged has been deceived or misled by such variation, he or they may adjourn the case on such terms as he or they may think fit, and in the meantime commit the defendant to prison or place of security, or discharge him on his entering into a recognizance with or without sureties conditioned for his appearance at the time and place of adjournment; and if he fail to appear the Justice then present, upon certifying such non-appearance on the back of the recognizance, may transmit it. (*Id.* s. 3.)

17. DESCRIPTION OF OWNERS, ETC.—In any informa-

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tion or complaint, or proceedings thereon, in which it is necessary to state the ownership of any property belonging to or in the possession of *partners, joint tenants, parceners, or tenants in common*, it shall be sufficient to name one of such persons and to state the property to belong to the person so named and another or others (as the case may be), and in any case to describe any partners, joint tenants, parceners, or tenants in common in a similar manner. (*Id.* s. 4.)

18 AIDERS AND ABETTORS.—Every person who shall aid, abet, counsel, or procure the commission of any offence now or hereafter punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable, on conviction, to the same forfeiture and punishment as such principal offender is liable, and may be proceeded against, either in the District or place where the principal offender may be convicted, or in that in which the offence of aiding, &c., may have been committed. (*Id.* s. 5.)

19. ATTENDANCE OF WITNESSES.—If it appear to any Justice, by the oath or affirmation of any credible person, that any person *within his jurisdiction* (a) is likely to give material evidence for the prosecutor, complainant, or defendant, and will not voluntarily appear as a witness, such Justice is required to issue a summons under his hand and seal, requiring him to appear as a witness at a time and

(a) A Justice cannot be ordered to attend at the house of an infirm witness to take his deposition. (*Ex parte Kimbolton*, 25 J. P. 759.)

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place therein mentioned; and if the person so summoned shall, without just excuse, refuse or neglect to appear, then (after proof on oath or affirmation of the service of the summons, either personally or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum (a) was tendered to him for his costs and expenses, the Justice or Justices, before whom he ought to have appeared, may issue a warrant for bringing him before the Justice issuing the summons, or some other Justice, and which warrant may be backed as before mentioned, in order to its being executed in another jurisdiction: or if the Justice is satisfied, by evidence upon oath or affirmation, that it is probable such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, a warrant may be issued in the first instance, and which, if necessary, may be backed as aforesaid. (*Id.* s. 7.)

20. REFUSING TO BE EXAMINED. —If, on the appearance of such person (either in obedience to the summons or by warrant), he shall refuse to take such oath or to be examined upon oath or affirmation, or having taken such oath or affirmation shall refuse, without just excuse, to answer such questions as are put to him, any Justice present, and having jurisdiction, may, by warrant, commit the person so refusing to the gaol, for not exceeding seven days, unless he shall, in the meantime, consent to be examined, and to answer concerning the premises. (*Id.* s. 7.)

(a) If the witness resides in the same town, it will still be necessary to tender a titling sum for expenses to justify a warrant of apprehension. No tender is directed to be made under 11 & 12 Vict., c. 49, s. 16.

21. COMPLAINTS FOR ORDER.—Complaints (a) upon which an order may be made for the payment of money or otherwise, need not be in writing, unless required by the Act upon which the complaint is framed. (*Id.* s. 8).

22. VARIANCES IN INFORMATIONS.—In all cases of informations for any offences or acts punishable upon summary conviction, any variation between such information and the evidence adduced in support thereof as to the time at which the offence is alleged to have been committed, shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law, or as to the place in which the offence is alleged to have been committed, provided the offence be proved to have been committed within the jurisdiction of the Justice by whom the information shall be heard and determined; and if any such variance, or any variance (b) in any other respect between the information and the evidence, shall appear to the Justice present and acting at the hearing to be such that the party charged has been thereby deceived or misled, such Justice may, upon such terms as he may think fit, adjourn the hearing of the case to some future day, and in the meantime commit the defendant to prison, or to such other custody as the Justice may think fit, or

(a) This clause does not state whether informations need be in writing or not. Under the old law it was not necessary for the information to be reduced to writing unless required by the particular statute, but as it will be now requisite to substantiate on oath the matter of the information for the purpose of obtaining a warrant, if the summons should be disobeyed, or of obtaining a warrant in the first instance, it is recommended that, as a general rule, the information should be taken in writing. The provision as to variances between the information and the evidence seems to imply that the information is in writing.

(b) A defendant cannot be convicted of a different offence from that stated in the information, this not being a variance within the meaning of the statute. (*Martin v. Priddison*, 20 L. J. 179; and *R. v. Brichall*, 33 L. J. 156, ante, p. 17.)

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may discharge him upon his entering into a recognizance, with or without surety, conditional for his appearance at the time and place to which the hearing is adjourned; and if he fail to appear upon the recognizance, any Justice then present may, upon certifying such non-appearance on the back of the recognizance, transmit the same to be proceeded upon in like manner as other recognizances. (*Id.* s. 9.)

23. INFORMATION OR COMPLAINT.—Every complaint upon which a Justice is or shall be authorized to make an order, and every information for any offence punishable on summary conviction, unless some particular statute shall otherwise require, may be made or laid without any oath or affirmation of the truth, except in cases of information, where the Justice shall issue a warrant in the first instance, and in every such case the matter of the information shall be substantiated by oath or affirmation of the informant, or some witness or witnesses on his behalf, before any such warrant is issued; and every such complaint or information shall be for (a) one offence or matter of complaint only, and may be made by the complainant or informant in person, or by his counsel or attorney, or other person authorized in that behalf. (*Id.* s. 10.) (When the information is on a statute and the words "unlawfully and ma-

(a) The statute was intended to prevent the practice of including several counts in an information, each for a different and distinct offence, and to prevent the joinder of several offences, and not of joint offenders. All persons committing the same offence at the same time and place may be legally inserted in the same information; and it will be for the Justices to determine whether the cases shall be heard together or separately. If desired by the defendants, it will be prudent to hear them separately. (See *R. v. Cridland*, 27 L. J. (M. C.), 28; *Ex parte Brown*, 26 J. P. 69; *Ex parte Higgins*, 26 J. P. 244; and *R. v. Littlechild*, 35 J. P. 86.)

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liciously, wilfully, knowingly, &c.," are used in the statute, they should be also used in the information.)

24. **LIMITATION OF TIME.**—In all cases where no time is specially limited, such complaint shall be made or information laid within six calendar months from the time when the matter of it arose. (*Id.* s. 11.)

25. **HEARING.**—Every such complaint and information shall be heard and adjudged by one or two or more Justice or Justices, as directed by the statute in that behalf, or, if there be no direction, by any one justice for the District or place where the matter of such information arose: and the room or place (a) where such Justice or Justices shall sit to hear and try any such complaint and information shall be deemed *an open and public court* (b), to which the public may have access, so far as it can conveniently contain them; and the party charged shall be admitted to make his full answer and defence, and to have the witnesses examined and crossed-examined by counsel

(a) *Time.*—In cases where monies, &c., are to be recovered in manner directed by Jervis's Act, the complaint arises when the demand is made, and the money not paid, and not when the works were completed. (*Labalmondiere v. Addison*, 23 J. P. 261.) The time of limitation does not begin until the matter of complaint is complete (*Jacob v. Dodgson*, 27 J. P. 68, and *Mayer v. Harding*, 17 L. T. 140); and it will not apply in the case of a continuing offence, as for instance, the emission of smoke from the want of an efficient alteration of a chimney. [*Higgins v. Northwick Union*, 22 L. T. (N.) 752.] An encroachment by the erection of a fence, is not a continuing offence. (*Ranking v. Forbes*, 34 J. P. 486. See *Treat*, 34 J. P. 513.)

(b) The Justices may, we have no doubt, pursue the course adopted by the Superior Judges, where decency requires such a step, and exclude women and boys in cases of bastardy, or other similar investigations. In proceedings under 11 & 12 Vict., c. 42, s. 19 (as to indictable offences), the place where the Justices sit is not an open court, and the public may be excluded.

Open Court.—Contempt of Court.—Persons should conduct themselves orderly, otherwise they should be ejected from the Court by the Constable on the Justice's order.

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or attorney; (a) and every such complainant and informant shall be at liberty to conduct such complaint or information respectively, and to have the witnesses examined and cross-examined by counsel or attorney. (*Id.* s. 12.)

26. NON-APPEARANCE OF DEFENDANT.—If at the time and place appointed by the summons for hearing the complaint or information, the defendant does not appear when called, the constable or other person who served the summons shall then declare upon oath in what manner he served the summons; and if it appear, to the satisfaction of any Justice, that he duly served the summons, such Justice may proceed to hear and determine the case in the absence of the defendant, or may issue his warrant in manner hereinbefore directed, and adjourn the hearing until the defendant is apprehended; and when the defendant is apprehended under the warrant, he shall be brought before the same or some other Justice of the same District, or place, who shall either by warrant commit (b) such defendant to prison, or verbally to the custody of the constable or other person who shall have apprehended him, or to such other safe custody as he or they shall deem fit, and order the defendant to be brought up at a certain time and place before such Justice as shall then be there, of which order the complainant or informant shall have due notice. (*Id.* s. 13.)

(a) In *Cabbett v. Hudson*, 22 L. J. (N. S.), it was decided a person could act as his own advocate, and afterwards give evidence as a witness—L. T. N. S. 637. *Cockburn, C. J.*, said "Justices might permit a Police Superintendent to appear, and hear him upon the case, if they thought fit." *Obs.* 150.

(b) There is no provision authorizing the Justices to take bail in case of the defendant being apprehended on a warrant after disobedience to a summons.

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27. NON-APPEARANCE OF COMPLAINANT.—If the defendant appears in obedience to the summons, or shall be brought by virtue of any warrant, then, if the complainant or informant, having had such notice, do not appear by himself, his counsel or attorney, the Justice shall dismiss (a) the complaint or information, unless for some reason he shall think proper to adjourn the hearing unto some future day, upon such terms as he shall think fit, in which case such Justice may commit the defendant in the meantime to prison, or to such other custody as he shall think fit, or may discharge him upon his entering into a recognizance, with or without sureties, conditional for his appearance at the time and place to which the hearing is adjourned; and if the defendant does not appear, then the Justice who shall have taken the recognizance or any Justice then present, upon certifying such non-appearance on the back of the recognizance, may transmit the same. (*Id.* s. 13.) (b)

28. WHEN BOTH PARTIES APPEAR.—If both parties appear, either personally or by attorney, then the Justice shall proceed to hear and determine the complaint or information. (*Id.* s. 13.) (c)

(a) Although a certificate of dismissal cannot be granted under this section, it would seem that the Justices may dismiss the complaint, and under the 18th section order the complainant to pay costs to the defendant. (27 *J. P.* 366.)

(b) See *ante*, pp. 68 & 69 Recognizances.

(c) COMPROMISING.—At this stage of the proceeding the good offices of Justices may be properly exerted in many cases in inducing parties to compromise their differences; and if it should be deemed inexpedient to make the attempt at reconciliation, or if the attempt should prove unsuccessful the matter then proceeds in the ordinary way; but the Justices may safely endeavor to bring about a compromise. As regards offences solely of a public nature, and as to which no particular party is injured, so as to enable him to maintain an action, a compromise without leave of the Court would appear from the cases to be illegal. Even in a case of common assault where the parties had compromised and so informed

29. WHEN DEFENDANT ADMITS THE CHARGE.—Where the defendant is present at the hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he have any cause to show why he should not be convicted, or why an order should not be made against him (as the case may be) (a), and if he admit the truth of the information or complaint, and shows no cause or no sufficient cause why he should not be convicted, or an order made against him, then the Justice present at the hearing shall convict him, or make an order accordingly. (*Id.* s. 14.)

30. WHEN DEFENDANT DOES NOT ADMIT THE CHARGE.—If the defendant does not admit the truth of the information or complaint, then the Justice shall proceed to hear the prosecutor or complainant, and such witnesses as he may examine, and such other evidence as he may adduce in support of his information or complaint; and also to hear the defendant and such witnesses as he may examine, and such other evidence as he may adduce in his defence, and such witnesses as the prosecutor or complainant may examine in reply, if the defendant has examined any witnesses or given any evidence other than as to his

the Justices after the issuing of the summons, Queen's Bench held the Justices had jurisdiction to try and determine the case, and that the conviction cou'd not be quashed. *Reg. v. Justices of Wiltshire*, 8 L. T. (N. S.), 242. *Oke* 156, 157.

Generally in such cases under summary jurisdiction where the matter is not of a public nature the Magistrates will not object to a compromise.

Rehearing.—Magistrates are sometimes asked to *rehear* a case. They have no power to do so after having once delivered their judgment. *Stone* 440.

(a) The information need not be re-sworn in presence of defendant. The usual way to conduct the case, is for the Clerk of the Peace or Magistrate to read over the complaint to defendant, or when there is no complaint to tell him what the charge is against him—and then to ask him whether he is guilty or not guilty of the charge; if he admits the charge he can be there and then convicted. *Oke* 159.

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(the defendant's) general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply; and the Justice or Justices, having heard what each party shall have to say, and the witnesses and evidence, shall consider the whole matter and determine the same, and shall convict or make an order upon the defendant, or dismiss the information or complaint, as the case may be (*Id.* s. 14.) (a)

31. WHERE CONVICTED OR ORDER MADE.—If the defendant is convicted, or an order made against him, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction or order shall afterwards be drawn up and lodged with the Clerk of the Peace. (*Id.* s. 14.) *When once the order is delivered out, it cannot be altered. Conviction may be altered.*

32. WHEN THE INFORMATION IS DISMISSED.—If the Justice or Justices shall dismiss the information or complaint, he or they may (if required) make an order of dismissal of the same, and give the defendant (b) a certificate

(a) The same strictness and regularity should be pursued in examining and taking down the evidence of the various witnesses as are resorted to in the Superior Courts.

No reply allowed.—No reply is allowed upon evidence nor a general reply. The observations being confined to the opposing statement of complainant and the statement of the defendant in his defence.

(b) The certificate should not be given unless the information was dismissed on the merits; if, therefore, it was dismissed on the ground that it was not laid by a police officer, as required under 23 Vict. c. 27, s. 30, a certificate should not be granted. (See *Foster v. Hull*, 33, J. P. 629.)

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thereof, which certificate, upon being produced, without further proof, shall be a bar to any subsequent information or complaint, for the same matter against the same party. (*Id.* s. 14.)

33. NEGATIVE EXCEPTIONS.—If the information or complaint negative any exemption (*a*), exception, proviso, or condition in the statute on which it is framed, it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence. (*Id.* s. 14.)

34. WHEN PROSECUTORS AND COMPLAINANTS MAY BE WITNESSES.—Every prosecutor of any such information, not having any pecuniary interest in the result, and every complainant, whatever his interest may be, shall be a competent witness to support the information or complaint. (*Id.* s. 15.)

35. EXAMINATION UPON OATH.—Every witness to be examined upon oath or affirmation, and the Justice or Justices shall have full power to administer to every such witness the usual oath or affirmation. (*Id.* s. 15.)

36. ADJOURNMENT.—Before or during the hearing, any one Justice, or the Justices present, may adjourn the hearing to a certain time and place then appointed and stated in the presence and hearing of the parties or their attorneys

(*a*) An informer is competent in all cases, irrespective of any question as to his pecuniary interest in the result. Defendant may be examined in all summary proceedings if they think fit. See Consol. Stat., p. 150.

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or agents present (a), and in the meantime suffer the defendant to go at large or commit him to the gaol, or to such other safe custody as the Justice shall think fit, or discharge him upon his entering into a recognizance, with or without sureties, conditional for his appearance at the time and place to which the hearing is adjourned. (*Id.* s. 16.) (b)

(a) The Justices can, under this section, adjourn the case when both parties or their attorneys or agents are present, and can, under the 13th section, adjourn it when the defendant only appears. There is no limitation of time to which the adjournment may be made, as in case of a remand under 11 & 12 Vict., c. 42, s. 21. (20 *F. P.* 540.) A defendant cannot claim an adjournment as a matter of right to enable him to obtain professional assistance. (*Ex parte Biggins*, 26 *F. P.* 244.)

Ordering Witnesses out of Court.—Before the case is entered into, either party may apply to have the witnesses ordered out of Court, which request is usually complied with. It is unusual, however, to include in this order medical witnesses or those who are merely to speak to mere matters of fact or character, and the attorneys for the respective parties are always excepted. Should the witnesses violate the rule and come into Court, their testimony cannot on that account be rejected. *Oke*, p. 151.

Conviction on view.—In the case of *Regina v. Smith*, Lord Denman's observations were these—"We think that a Magistrate empowered to convict upon the view, ought first to call upon the offender for a defence. However rapid the proceedings may be, there must be time for stating a charge and for receiving an answer to it. A driver seen riding upon his waggon is *prima facie* a fit subject for punishment, but if he could shew that he was compelled so to ride by supervening illness, or some accident the penalty should be remitted. *Oke* recommends a summons or warrant to issue, except perhaps where apprehension without warrant is allowed by statute. *Oke*, p. 151.

(b) *Adjournment.*—The Magistrate is not obliged to fix the penalty or imprisonment at the instant of conviction; he may take time to consider his judgment. *Oke*, p. 163.

Conviction.—Having determined to convict or make an order, the Justice should openly pronounce his complete judgment in open Court, and should state in his judgment, the fine, imprisonment, costs, &c., that he adjudges in the case.

Judgment.—With respect to the functions of Justices in summary cases it is thus laid down—"Upon summary proceedings before Magistrates they are placed in the situation of a jury, and the degree of credit to be attached to the evidence is for their consideration and judgment. Since, however, the proceedings before them are usually of a criminal and penal nature, and as they are substituted for a jury, who must, in order to convict, have all been satisfied by the evidence of the criminality of the defendant, the evidence ought to be fully satisfactory and convincing to the mind and conscience of the Magistrate before he pronounces the party to have been guilty—if any reasonable doubt exists in his mind the party charged is entitled to the benefit of that doubt. Such cases differ materially from those where mere civil rights are concerned, and where the mere preponderance of evidence may be sufficient to decide the question. In point of law the evidence will support a conviction by a Magistrate, if there was such evidence as would have been sufficient to have been left to a jury. So if the Magistrate acquit where

Summary Jurisdiction.

37. NON-APPEARANCE OF PARTIES.—If at the time and place to which the hearing has been adjourned, either or both of such parties shall not appear personally or by counsel or attorney, the Justice then present may proceed to the hearing as if such party or parties were present; or if the prosecutor or complainant do not appear, the Justice may dismiss the information or complaint with or without costs. (11 & 12 Vict., c. 43, s. 16.)

38. DEFENDANT DISCHARGED ON RECOGNIZANCE NOT APPEARING.—In all cases where a defendant discharged on recognizance as aforesaid does not appear accordingly, the Justice who has taken the recognizance, or any other Justice then present, upon certifying such non-appearance on the back of the recognizance, may transmit the recognizance. (*Id.* s. 16.)

39. FORM OF CONVICTIONS AND ORDERS.—Where no particular form of conviction or order shall be given by the statute creating the offence or authorizing the order, and in all cases of (a) convictions or orders, *under statutes hitherto passed*, whether any particular form shall therein be given or not, the conviction or order may be drawn up in the form mentioned in the schedule to this Act. (*Id.* s. 17.)

there seems to be a *prima facie* evidence to convict, his judgment cannot be questioned, for no other Court can judge of the credit due to witnesses who are not examined there." *2 Starke Evid.* 331. (*Oke*, pp. 161, 163.)

(a) The form given will apply to all convictions and orders made under statutes passed previously to this Act which are not excluded from its operation by virtue of the 35th section. (*R. v. Hyde*, 21 L. J. 94, and *Re Allison*, 24 L. J. 73.) It will also apply to convictions or orders under statutes passed since, unless they give a different form.

40. NOTICE OF ORDERS.—In all cases where, by statute, authority is given to commit a person to prison, or to levy any sum by distress, for not obeying any order of a Justice, the defendant shall be served with a copy of the minute (a) of such order before any warrant of commitment or distress shall issue; and such order or minute shall not form any part of such warrant of commitment or distress. (*Id.* s. 17.)

41. COSTS.—In all cases of summary conviction or of orders made by a Justice, he may, at discretion, award and order, in the conviction or order, that the defendant shall pay to the prosecutor or complainant respectively such costs (b) as to the Justice shall seem reasonable, and in cases where such Justice shall, instead of convicting or making an order, dismiss the information or complaint, it shall be lawful for him at his discretion, by his order of dismissal, to award and order that the prosecutor or complainant shall pay to the defendant such costs as to the Justice shall seem just and reasonable; and the sums so allowed for costs shall in all cases be specified in the con-

(a) The minute may be served before the formal order is signed. The order will have relation back to the time of the verbal adjudication. (*R. v. J. J. Huntingdonshire*, 19 L. J. 127; *Rail v. Parkinson*, 20 L. J. 208.) No minute of a conviction need in any case be served. This requirement is confined to orders.

(b) The Justices should specify the amount of costs in the conviction or order. (1 Arch. 31.) It is not usual in summary proceedings to allow the fee of an attorney, but there seems to be no legal objection against doing so. (26 J. P. 748.) See *Oke*, p. 174, where fee to attorney is allowed; also, *Saunders*, p. 99, where same rule is laid down. Unless there be a conviction or order the defendant cannot be ordered to pay costs to the complainant. In trivial cases it is not, however, unusual for the Justices to allow the information to be withdrawn on the defendant consenting to pay expenses. In case of a first conviction under 24 & 25 Vict., c. 96, or 97, the Justice is empowered by those Acts to discharge the offender on his making satisfaction to the party aggrieved for damages and costs or either of them as ascertained by the Justice.

Summary Jurisdiction.

viction or order, or order of dismissal, and be recoverable in the same manner, and under the same warrants, as any penalty or sum of money, adjudged to be paid by such conviction or order is recoverable; and in cases where there is no such penalty or sum, then such costs shall be recoverable by distress and sale of the goods of the party, and in default of distress, by imprisonment, with or without hard labor. See scale in Summary Jurisdiction Act, 1879.

42. WARRANTS OF DISTRESS.—Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorizing such conviction or order, such penalty, compensation, or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale; and also in cases where, by the statute in that behalf, no mode of raising or levying such penalty, compensation, or sums of money, or of enforcing payment thereof, is provided, the Justice making such conviction or order, or any Justice of the same District, may issue a warrant of distress for levying the same. (*Id.* s. 19.)

43. MAY BE BACKED.—If after delivery of such warrant of distress to the constable or constables to whom it is directed, sufficient distress shall not be found within the jurisdiction of the Justice granting it, then, upon proof alone on oath of the handwriting of the Justice granting the warrant, before any Justice of any other District, such last-mentioned Justice shall make an endorsement on the warrant signed by him, authorizing the execution of such warrant within his jurisdiction, and the penalty or sum and

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costs, or so much thereof as have not been levied or paid, may be levied in such other District. (*Id.* s. 19.)

44. WHERE NO GOODS OR DISTRESS RUINOUS.—Whenever it shall appear to any Justice to whom application is made for any such warrant of distress, that the issuing thereof would be ruinous to the defendant and his family, or whenever it shall appear, by the confession of the defendant or otherwise, that he has no goods or chattels whereon to levy the distress, such Justice may, instead of issuing a warrant of distress, commit the defendant to the gaol, to be imprisoned, for such time and in such manner as such defendant might be committed in case such warrant of distress had issued and no goods could be found. (*Id.* s. 19.)

45. CUSTODY OF DEFENDANT UNTIL RETURN OF DISTRESS WARRANT.—When a Justice issues such warrant of distress he may suffer the defendant to go at large, or verbally, or by a written warrant, order the defendant to be kept in safe custody until the return be made to such warrant of distress, unless the defendant give sufficient security, by recognizance or otherwise, to the satisfaction of the Justice, for his appearance before him at the time and place appointed for the return of the warrant, or before such Justice as may then be there; and if the defendant shall give security by recognizance, and fail to reappear, any Justice then present, upon certifying such non-appearance on the back of the recognizance, may transmit the same. (*Id.* s. 20.)

46. WHERE NOT SUFFICIENT DISTRESS.—If, at the time

and place appointed for the return of any such warrant of distress, the constable who shall have had the execution of the same shall return that he could find no goods or no sufficient goods whereon he could levy the sum therein mentioned, and costs of levying it, the Justice before whom it is returned may issue a warrant of commitment directed to the same or any other constable, reciting the conviction or order shortly, the issuing the warrant of distress and the return thereto, and requiring such constable to convey the defendant to the gaol, there to be imprisoned in such a manner and for such time as directed by the statute on which the conviction or order was founded, unless the sum or sums adjudged to be paid, and all costs of the distress and of the commitment, and of conveying the defendant to prison, if the Justice shall so order (the amount being ascertained, and stated in the commitment), shall be sooner paid. (*Id.* s. 21.)

47. WHERE THE STATUTE PROVIDES NO REMEDY IN DEFAULT OF DISTRESS.—In all cases where Justices are authorized to issue warrants of distress to levy penalties, or other sums recovered before them, but no further remedy is thereby provided in case no sufficient distress be found; and in all cases of convictions or orders where the statute on which they are founded provides *no remedy*, in case it shall be returned to a warrant of distress that no sufficient goods can be found, the Justice to whom such return is made, or any other Justice of the same District, may, by warrant, commit the defendant to gaol (proportioned as to time see sect. 40), unless the sum adjudged to be paid, and all costs of the distress, commit-

ment, and of conveying the defendant to prison (the amount being ascertained and stated in the commitment), shall be sooner paid. (*Id.* s. 22.)

48. COMMITMENT IN THE FIRST INSTANCE FOR NON-PAYMENT OF PENALTY OR MONEY.—In all cases where the statute by virtue of which a conviction for a penalty or compensation, or an order for the payment of money, is made, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith, or within a certain time therein mentioned, or to be mentioned in such conviction or order, the defendant shall be imprisoned, or imprisoned unless the same shall be sooner paid, in every such case the same shall not be levied by distress; but if the defendant do not pay the same, with costs, if awarded, forthwith, or at the time specified in the conviction or order, the Justice making such conviction or order, or any other Justice of the same District, may issue a warrant of commitment requiring the constable to whom it is directed, to convey the defendant to gaol, to be imprisoned, for such time as the statute on which the conviction or order is founded shall direct, unless the sum adjudged to be paid, and the costs of conveying the defendant to prison (if so ordered), shall be sooner paid. (*Id.* s. 23.)

49. WHERE THE CONVICTION OR ORDER DIRECTS IMPRISONMENT ONLY.—Where a conviction does not order the payment of any penalty but that the defendant be imprisoned for his offence, or where an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or re-

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refusal to do such act he shall be imprisoned, and the defendant neglects or refuses to do such act, then the Justice making the conviction or order, or some other Justice, may issue a warrant of commitment for conveying the defendant to the gaol, to be imprisoned for such time as the statute on which the conviction or order is founded shall direct; and in all such cases where, by such conviction or order, any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the Justice think fit, be levied by warrant of distress in manner aforesaid, and in default of distress the defendant may be committed to gaol, to be imprisoned for not exceeding _____, to commence at the termination of the imprisonment he shall then be undergoing, unless the sum for costs and all costs of the distress, commitment, and of conveying the defendant to prison (if so ordered), shall be sooner paid. (*Id.* s. 24.) This section is modified by sec. 4 of the Summary Jurisdiction Act, 1879, which gives the right to impose a fine in all cases where imprisonment only is prescribed by the Statute.

50. CONSECUTIVE IMPRISONMENTS.—Where a Justice upon any information or complaint as aforesaid, shall adjudge the defendant to be imprisoned, and such defendant shall (a) then be in prison or undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for such subsequent offence shall be forthwith

(a) This section applies equally to a case where a defendant is at one and the same time sentenced for several offences, as to a case in which he is already in prison. [*R. v. Cutbush*, 2 L. R. (Q. B.) 379, and *read*, 31 J. P. 493.]

delivered to the gaoler to whom it is directed, and the Justice issuing the same may order therein that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which the defendant has been previously sentenced. (*Id.* s. 25.)

51. RECOVERY OF COSTS WHEN INFORMATION DISMISSED.—When any information shall be dismissed with costs, the sum awarded for costs in the order of dismissal may be levied by distress on the goods of the prosecutor or complainant, and in default of distress, the prosecutor or complainant may be committed to the gaol for not exceeding one calendar month (see S. P.), unless such sum, and the costs of the distress, of the commitment, and of conveying him to prison (the amount being ascertained and stated in the commitment), shall be sooner paid. (*Id.* s. 26.)

52. DISTRESS WARRANT AFTER APPEAL.—After an appeal against any such conviction or order, if decided in favor of the respondents, the Justice who made the conviction or order, or any other Justice of the same District, may issue such warrant of distress or commitment for execution, as if no such appeal had been brought. (*Id.* s. 27.)

53. COSTS OF APPEAL.—If upon such appeal the court of quarter sessions shall order either party to pay costs, the order shall direct such costs to be paid to the Clerk of the Peace, to be by him paid over to the party entitled to them, and shall state within what time such costs shall be paid; and if the same are not paid within the time limited, and the party ordered to pay them is not bound by re-

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cognizance conditioned to pay such costs, the Clerk of the Peace shall, upon application of the party entitled to the costs, or any person on his behalf, and on payment of a fee of twenty-four cents, grant to the party applying a certificate that the costs have not been paid; and upon production of the certificate to any Justice, he may enforce the payment of such costs by warrant of distress; and in default of distress may commit the party against whom the warrant was issued for not exceeding three calendar months, unless the costs, and all costs of the distress, and of the commitment and conveying the party to prison, if so ordered (the amount being ascertained and stated in the commitment), shall be sooner paid. (*Id.* s. 27.) (a)

54. PAYMENT OF PENALTY, COSTS, ETC.—Where any person against whom a warrant of distress shall issue as aforesaid, shall pay or tender to the constable having the execution thereof the sum or sums mentioned in the warrant, with the amount of expenses of the distress up to the time of payment or tender, the constable shall cease to execute the same; and in all cases where any person shall be imprisoned for non-payment of any penalty or other sum, he may pay to the keeper of the prison the sum mentioned in the commitment, with the costs and expenses (if any) also mentioned therein, and the keeper shall re-

(a) *Fine or Imprisonment.*—In all cases now the Magistrates can either fine or imprison; on the question as to whether the Magistrate will fine or imprison, he will be guided by the circumstances of each case; for instance, in a case of aggravated assault on a woman, the punishment in all bad cases should be imprisonment; as also should cases of assault on Constables, where the attack is wanton and unprovoked and the injury serious. The flagrancy of the offence, its public nature, and other considerations, will weigh with the Justice in deciding as to whether he will fine or imprison.

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ceive the same and discharge such person, if he be in his custody for no other matter. (*Id.* s. 28.) (a)

55. ONE JUSTICE MAY RECEIVE INFORMATIONS AND GRANT WARRANTS OF EXECUTION, ETC.—In all cases of summary proceedings before a Justice upon any information or complaint as aforesaid, *one* Justice may receive the information or complaint, and grant a warrant or summons thereon, and may issue his summons or warrant for the attendance of witnesses, and do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute such information or complaint must be heard and determined by two or more Justices; and after the case has been heard and determined one Justice may issue all warrants of distress or commitment thereon. (*Id.* s. 29.)

56. ANOTHER JUSTICE MAY HEAR.—The Justice who so acts before or after such hearing, need not be the Justice or one of the Justices before whom the case shall be heard and determined, but where by statute it is required that any information or complaint shall be heard and determined by two or more Justices, or that a conviction or order shall be made by two or more Justices, such Justices must be present and act together during the whole of the hearing and determination of the case. (*Id.* s. 29.)

(a) *Distress Warrant how executed.*—In executing a distress warrant, Constable cannot break open doors, but must wait until he can obtain admittance; he may, however, break open the doors of another person if the goods of the person against whom the warrant is directed have been removed there to avoid seizure, but if the goods are not found he will be a trespasser and must abide the consequences; no prudent Constable would run such a risk. The Constable should make the person, on whose behalf the distress is made, point out the goods to be levied on; he is bound to shew his warrant to the person whose goods are distrained, if he be so required, and to permit a copy to be taken, but he must not part with the warrant out of his possession.

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57. PAYMENT OF PENALTIES, ETC.—In every warrant of distress, the constable or other person to whom it is directed shall be thereby ordered to pay the amount of the sum to be levied to the Clerk of the Peace, and if received by the constable or the gaoler, the same are to be paid over by him to the clerk. (*Id.* s. 31.)

58. FORMS.—The forms in the schedule, or forms to the like effect, are to be valid. (*Id.* s. 32.)

IMPERIAL ACT 11 & 12 VICTORIA, CAP. 43.

APPENDIX OF FORMS.

No. 1.

Summons to the Defendant upon an Information or Complaint.

—— District, } NEWFOUNDLAND.
 to wit. }

To A. B. of ——, Fisherman.

Whereas information hath this day been laid (*or complaint hath this day been made*) before the undersigned Justice of the Peace for the said District, for that you (*here state shortly the matter of the information or complaint*): These are therefore to command you, in Her Majesty's name, to be and appear on ——, at —— o'clock in the forenoon, at ——, before such Justices of the Peace for the said District as may then be there, to an-

NOTE.—All the forms here given should be headed like this first one, Newfoundland, &c., and all should have the seal of the Justice.

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swer to the said information or complaint, and to be further dealt with according to Law.

Given under my Hand and Seal, this — day of
—, in the year of our Lord — at —
in the District aforesaid.

J. S. (L. S.)

No. 2.

Warrant where the Summons is disobeyed.

To the Constable of — and to all other
Constables in the said District.

Whereas on — last past information was laid (*or complaint was made*) before the undersigned, Justice of the Peace for the said District for that A. B. (&c., *as in the summons*): And whereas I then issued my summons unto the said A. B., commanding him, in Her Majesty's name, to be and appear on — at — o'clock in the forenoon at — before such Justices of the Peace for the said District as might then be there, to answer to the said information or complaint, and to be further dealt with according to Law: And whereas the said A. B. hath neglected to be or appear at the time and place so appointed in and by the said summons, although it hath now been proved to me upon Oath that the said summons hath been duly served upon the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before some Justice of the Peace for the said District, to answer to the said in-

Given under my Hand and Seal, this day of
 , in the year of our Lord at
in the District aforesaid.

No. 3.

To the Constable of District, &c.

Given under my Hand and Seal, this day of
 , in the year of our Lord at
in the District aforesaid.

No. 4.

To W. T., Constable of and to the
Keeper of the Gaol at .

Whereas on last past information was laid (or com-

Justices of the Peace.

plaint was made) before the undersigned Justice of the Peace for the said District for that (*&c., as in the summons*): And whereas the hearing of the same is adjourned to the day of instant at o'clock in the forenoon at and it is necessary that the said A. B. should in the meantime be kept in safe custody: These are therefore to command you the said Constable, in Her Majesty's name, forthwith to convey the said A. B. to the gaol at , and there deliver him into the custody of the Keeper thereof, together with this Precept; and I hereby command you the said Keeper to receive the said A. B. into your custody in the said gaol, and there safely keep him until day of instant, when you are hereby required to convey him the said A. B. at the time and place to which the said hearing is so adjourned as aforesaid, before such Justice of the Peace for the said District as may then be there, to answer further to the said information or complaint, and to be further dealt with according to Law.

Given under my Hand and Seal, this day of , in the year of our Lord at in the District aforesaid.

J. S., J. P. (L. S.)

No. 5.

Recognizance for the Appearance of the Defendant where the case is adjourned, or not at once proceeded with.

Proceed as in Form (S. 1), page 88, and then endorse this condition.

The condition of the within written Recognizance is such that if the said A. B. shall personally appear on the day of instant at o'clock in the forenoon

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at before such Justice of the Peace for the said District as may then be there, to answer further to the information (*or complaint*) of C. D. exhibited against the said A. B., and to be further dealt with according to Law, then the said Recognizance to be void, or else to stand in full force and virtue.

No. 6.

Summons of a Witness.

To E. F. of in the said District of .

Whereas information was laid (or complaint was made) before the undersigned Justice of the Peace for the said District, for that (*&c., as in the summons*) ; and it hath been made to appear to me (upon oath) that you are likely to give material evidence on behalf of the (prosecutor, or complainant, or defendant) in this behalf: These are therefore to require you to appear on the day of at o'clock in the forenoon at before such Justice of the Peace for the said District as may then be there, to testify what you shall know concerning the matter of the said information (or complaint.)

Given under my Hand and Seal, this day of , in the year of our Lord at in the District aforesaid.

T. WILLS, J. P. (L. S.)

No. 7.

Warrant where a Witness has not obeyed a Summons.

To the Constable of and to all other Constables in the said District.

Whereas information was laid (*or complaint was made*)

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before the undersigned Justice of the Peace for the said District, for that (*&c., as in the summons*) ; and it having been made to appear to me upon oath that E. F. of in the said District, *Laborer*, was likely to give material evidence on behalf of the (*prosecutor*), I did duly issue my summons to the said E. F., requiring him to be and appear on at o'clock in the forenoon of the same day at before such Justices of the Peace for the said District as might then be there, to testify what he should know concerning the said A. B., or the matter of the said information (*or complaint*) : And whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said E. F., and of a reasonable sum having been paid (*or tendered*) to him for his costs and expenses in that behalf : And whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse hath been offered for such neglect : These are therefore to command you to take the said E. F., and bring him on at o'clock in the forenoon at before such Justice of the Peace for the said District as may then be there, to testify what he shall know concerning the matter of the said information (*or complaint*).

Given under my Hand and Seal, this day of
 , in the year of our Lord at
 in the District aforesaid.

T. WILLS, J. P. (L. S.)

Warrant for a Witness in the first instance.

Whereas information was laid (*or complaint was made*) before the undersigned Justice of the Peace for the said District, for that (*&c., as in the summons*) ; and it being made to appear before me upon oath that E. F. of (*Laborer*) is likely to give material evidence on behalf of the (*prosecutor*) in this matter, and it is probable that the said E. F. will not attend to give evidence without being compelled so to do: These are therefore to command you to apprehend and bring the said E. F. before me on the day of at o'clock in the forenoon at or before such other Justice of the Peace for the said District as may then be there, to testify what he shall know concerning the matter of the said information (*or complaint.*)

T. WILLS, J. P. (L. S.)

Commitment of a Witness for refusing to be sworn or to give Evidence.

Whereas information was laid (or complaint was made) before the undersigned Justice of the Peace for the said

Justices of the Peace.

District, for that (*&c., as in the summons*); and one E. F., hereinafter called the witness, now appearing before me such Justice as aforesaid on at and being required by me to make oath or affirmation as a witness in that behalf, hath now refused so to do (*or being now here duly sworn as a witness in the matter of the said information or complaint, doth refuse to answer certain questions concerning the premises which are now here put to him*), without offering any just excuse for such his refusal: These are therefore to command you the said Constable to take the said witness and him safely convey to the gaol at aforesaid, and there deliver him to the said keeper thereof, together with this Precept; and I do hereby command you the said keeper to receive the said witness into your custody in the said gaol, and there imprison him for such his contempt for the space of days unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my Hand and Seal, this day of
, in the year of our Lord at
in the District aforesaid.

J. S., J. P. (L. S.)

No. 10.

Warrant to remand a Defendant when apprehended.

To W. T., Constable of and to the keeper
of the gaol at

Whereas information was laid (*or complaint was made*)
before the undersigned Justice of the Peace in and for the

Summary Jurisdiction.

said District of _____, for that (&c., as in the summons or warrant): And whereas the said A. B., hereinafter called the defendant, hath been apprehended by warrant upon such information (or complaint), and is now brought before me as such Justice as aforesaid: These are therefore to command you the said Constable, in Her Majesty's name, forthwith to convey the said defendant to the gaol at _____ and there to deliver him to the said keeper thereof, together with this Precept; and I do hereby command you the said keeper to receive the said defendant into your custody in the said gaol, and there safely keep him until _____ next, the _____ day of _____ instant, when you are hereby commanded to have him at _____ at _____ o'clock in the forenoon of the same day, before such Justice of the Peace of the said District as may then be there, to answer to the said information (or complaint), and to be further dealt with according to Law.

Given under my Hand and Seal, this _____ day of _____, in the year of our Lord _____ at _____ in the District aforesaid.

J. S., J. P. (L. S.)

No. 11.

Conviction for a Penalty to be levied by Distress, and in default of sufficient Distress, imprisonment.

Be it remembered that on the _____ day of _____ in the said District, A. B. (hereafter called the Defendant), is convicted before me, the undersigned Justice of the Peace for the said District, for that (he the said Defendant, &c., stating the offence, and the time and place when and where

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committed); and I do adjudge the said Defendant for his said offence, to pay the sum of (stating the penalty, and also the compensation, if any), to be paid and applied according to law, and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith (or on or before next) *I order that the same be levied by Distress and sale of the Goods and Chattels of the said Defendant, and in default of sufficient Distress* I adjudge the said Defendant to be imprisoned in the Gaol at , for the space of , unless the said several sums, and all costs and charges of the said Distress (and of the commitment and conveying of the said Defendant to the said Gaol), shall be sooner paid.

Given under my Hand and Seal, the day and year first above mentioned, at aforesaid.

T. WILLS, J. P. (L. S.)

* Or where the issuing of a Distress Warrant would be ruinous to the Defendant or his family, or it appears that he has no Goods whereon to levy a Distress, then, instead of the words between the Asterisks**, say, "then, inasmuch as it hath now been made to appear to me (that the issuing of a Warrant of Distress in this behalf would be ruinous to the said Defendant and his family," or, "that the said Defendant hath no Goods or Chattels whereon to levy the said sums by Distress), I adjudge, &c., as above, to the end.

Note to Form, No. 11.—This form is used when the Magistrate orders the amount to be levied by distress; in all such cases a distress warrant should issue in the Form, No. 16.

*Conviction for a Penalty, and in default of Payment,
Imprisonment.*

T. WILLS, J. P. (L S.)

Note to Form, No. 12.—This Form will be the one commonly used by a Magistrate, as by the S. P., p. 129. Justices may commit without issuing warrant of distress in all cases where the penalty, including costs, does not exceed \$24, most cases will be under that amount, and when the pressure of imprisonment won't force the defendant to pay the fine, it is scarcely probable that it will be recovered under a distress warrant which in ordinary practice is seldom resorted to.

Justices of the Peace.

No. 13.

Form of Order (General).

Be it remembered, that on complaint was made before the undersigned Justice of the Peace for the said District for that (*stating the facts entitling the complainant to the Order, with the time and place when and where they occurred*) ; and now, at this day, to wit, on at the parties aforesaid appear before me the said Justice [*or the said C. D. appears before me the said Justice, but the said A. B. (hereafter called the Defendant) although duly called, doth not appear by himself, and it is now satisfactorily proved to me on Oath that the said Defendant has been duly served with the Summons in this behalf which required him to appear here on this day to answer the said complaint, and to be further dealt with according to law*] ; and now, having heard the matter of the said complaint, I do adjudge, &c. ; then follow the forms of convictions for Penalties 11 & 12, according to the circumstances of the case from the words "I do adjudge."

No. 14.

Order of Dismissal of an Information or Complaint.

Be it remembered, that on Information was laid (*or Complaint was made*) before the undersigned Justice of the Peace for the said District of for that (*&c., as in the summons to the Defendant*), and now at this day, to wit, on at , both the said parties appear before me in order that I should hear and determine the said information (*or complaint*), [*or the said A. B. appeareth before me, but the said C. D. (the complainant) although duly called, doth not appear*] ; whereupon the matter of

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No. 16.

Warrant of Distress upon a conviction for a Penalty.

To the Constable of _____, and to all other
Constables in the said District.

Whereas A. B., late of _____, (*Fisherman*) (hereafter called the Defendant) was on this day (or on _____ last past) duly convicted before me the undersigned Justice of the Peace for the said District, for that (*stating the offence as in the conviction*), and it was thereby adjudged that the said Defendant should pay (&c., *as in the conviction*), and also pay the sum of _____ for costs; and that if the said several sums should not be paid (*forthwith*) the same should be levied by distress and sale of the goods and chattels of the said Defendant; and that in default of sufficient distress the said Defendant should be imprisoned in the Gaol at _____, for the space of _____, unless the said several sums, and all costs and charges of the said distress, and of the commitment and conveying of the said Defendant to the said Gaol, should be sooner paid: And whereas the said Defendant being so convicted as aforesaid, and being (*now*) required to pay the said sums of _____ and _____ hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said Defendant, and if within the space of _____ days next after the making of such distress the said sums, together with the reasonable charges of taking and keeping the Distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising by such

(a) Where there is no Clerk of the Peace, a Justice may act as Clerk of the Peace, p. 12.

Justices of the Peace.

for the said District, to answer to the complaint of C. D. (*here state complaint*), and on the consideration of the said complaint, I adjudged the said defendant * to pay the sum of dollars forthwith (or on), and also to pay dollars, costs to the said C. D. (*to be levied by distress and sale of the defendant's goods and chattels, and that in default of sufficient distress, defendant should be imprisoned for months, and no sufficient distress whereon to levy said sums having been found*) * (*omit these words when no distress warrant is issued*). Or when the punishment is imprisonment only, omit all the words between the asterisks.* I adjudged the said defendant should be imprisoned in the said gaol for months (*unless the said sums should be sooner paid*), (*omit these words where the punishment is imprisonment only*). These are therefore to command you the said Constable to convey the defendant to the said gaol and deliver him to the keeper thereof, with this warrant; and I command you the said keeper to receive the defendant in the said gaol, and there imprison him (*and keep him at hard labor*) for the space of months (*unless the said sums should be sooner paid*). And for your so doing this shall be your sufficient warrant.

Given under my Hand and Seal, this day
of 18 , at aforesaid.

T. WILLS, J. P. (L. S.)

Summary Jurisdiction.

No. 19.

Warrant of Distress for Costs upon an Order for Dismissal of an Information or Complaint.

To the Constables of District.

Whereas on last past information was laid (*or complaint was made*) before the undersigned Justice of the Peace for the said District, for that (&c., *c. in the order of dismissal*) ; and afterwards, to wit, on at both parties appearing before me, and the said complaint (*or information*) being by me duly heard and considered, and it manifestly appearing to me that the said information (*or complaint*) was not proved, I therefore dismissed the same, and adjudged that the said C. D., hereafter called the complainant, should pay to the said A. B. the sum of for his costs incurred by him in his defence in that behalf; and I ordered that if the said sum for costs should not be paid (*forthwith*) the same should be levied of the goods and chattels of the said complainant [and I adjudged that in default of sufficient distress that behalf the said complainant should be imprisoned in the gaol at (*and there kept to hard labor*), for the space of unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said C. D. to the said gaol, should be sooner paid] :* And whereas the said complainant being now required to pay unto the said A. B. the said sum for costs, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress, then follow the words in form 16, substituting *complainant* for *defendant*.

day

(L. S.)

Justices of the Peace.

No. 20.

Commitment for Non-payment of Costs.

This can readily be adapted from the general form of commitment, altering the words after "*on consideration of the complaint,*" into, *and on the hearing of the said complaint, I adjudged the same not to be proven and dismissed the said complaint, and adjudged the complainant to pay the defendant* *dollars for the costs incurred by him in his defence, &c., to be levied by distress, &c., as in form 18, substituting complainant for defendant.* (Conform to the scale on p. 606.)

THE SUMMARY JURISDICTION ACT OF 1879.

INTRODUCTION.

42 AND 43 VICTORIA, CAP. 49.

This important Act is part of the law of the colony, and magistrates should attend carefully to its provisions. One of the main objects and effect of this great measure of law reform is to enlarge the discretionary powers of magistrates. The old law laid down a hard and fast line, which Justices had to follow, no matter what might be the circumstances of the case. The new law provides (sec. 4) That punishment may be mitigated, and where the law gives only imprisonment as a punishment a fine may be imposed, and where a fine is prescribed of a specific amount, the Court, in respect of a first offence, may reduce the amount, notwithstanding the words of the statute. (1) The magistrate may (sec. 16), if he considers the offence of a trifling nature, inflict no punishment or nominal punishment; may order him to pay damages, or may order the accused to find security, or release him on his own security, to appear for sentence when called on. There are other valuable provisions that sums recoverable by summary orders may be recoverable as civil

(1) In the case of *Knee v. Knee*, a prosecution for sailing for the sealfishery before six o'clock in the forenoon of 12th March, a specific penalty of \$4,000 was prescribed in the Act. The evidence shewed that the defendant had only moved his steamer to escape an inevitable ice blockade; and as it was a first offence I reduced the fine under this section to twenty cents.

Summary Jurisdiction Act, 1879.

debts, provision as to the payment of money by instalments. New regulations in Summary Jurisdiction in case of societies to keep the peace; a new scale of imprisonment for non-payment of money. The magistrate is given absolute power to fine or imprison as he may deem most expedient. Provision for the summary trial of children, young persons and adults, for indictable offences, &c., &c.

APPLICATION OF IMPERIAL AND LOCAL CRIMINAL LAW.

As difficulties may arise about the application of this new Summary Jurisdiction Law within the colony, I will endeavor to shew how the local law and the Imperial Acts can be worked together. Where, for instance, the local law in a clear, defined manner lays it down that certain offences shall be tried by certain Courts in a summary manner *without a jury*, and on conviction the offender shall be subject to imprisonment not exceeding six months, or to a certain fine. This new English law provides, under sec. 17, that in all cases, except assault, where an accused person is charged with an offence before a Court of Summary Jurisdiction, in respect of the commission of which an offender is liable, on conviction, to three months imprisonment, he may claim to be *tried by a jury*. The two laws are here in direct conflict, and the local law governs the proceedings, as it is a case definitely provided for by local statute. When, however, the two laws are not directly conflicting, and can be worked together, they may operate simultaneously; for instance, in the case above referred to, all the provisions of this Act (sec. 4), as to mitigation of punishment (sec. 7), payment of money by instalments, and (sec. 16) giving power to the Court to

Summary Jurisdiction Act, 1879.

discharge the prisoner without punishment. All these sections operate, and may be put in force by the magistrate trying the case. One more instance will help to make this point clear. The Colonial law provides that for stealing codfish, green or cured, not exceeding \$20 in value, the punishment on summary conviction shall not exceed six weeks imprisonment. Under the English law, if the offender were an adult (16 years old or upwards), he could not be tried summarily for such an offence without his consent, but if he did consent, the punishment might be heavier; in this case again the magistrate should follow the local law, and not the Imperial Act, this being a case provided for by local enactment. Under the Consolidated Statutes of Newfoundland, which contains the local Malicious Injuries Act, "It is provided that the foregoing enactment shall in no way prevent the operation of any law of England with regard to wilful and malicious injuries which may be in force in this Colony, but shall run concurrently therewith;" without this saving clause malicious injuries would have to be prosecuted strictly under the provision of the local law.

DEFINITIONS.

The expression "*child*" in this Act means a person who, in the opinion of the Court, is under twelve years old; "*young person*," who in the opinion of the Court is twelve, and under sixteen years; "*adult*" means a person who, in the opinion of the Court, is of the age of sixteen, and upwards; "*guardian*" means any person who, in the

Summary Jurisdiction Act, 1879.

opinion of the Court has, for the time being, the charge of, or control over, such child; "*fine*" means any pecuniary penalty, or pecuniary forfeiture, or pecuniary compensation, payable under conviction. Fines all through this Act are in pounds sterling; I have given a rough equivalent in dollars; the magistrate should but rarely inflict the extreme penalty.

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SUMMARY JURISDICTION ACT, 1879.

42 AND 43 VICT. CAP. 49.

PART I.

COURT OF SUMMARY JURISDICTION.

Arrangement of Sections.

SECTIONS

1. Mitigation of punishment by Court.
2. Scale of imprisonment for non-payment of money.
3. Sum recoverable by summary order to be recoverable as a civil debt.
4. Payment by instalments of or security taken for payment of money.
5. Provision as to costs in the case of small fines.
6. Enforcing of recognizances by Court of Summary Jurisdiction.
7. Summary trial of children for indictable offences, unless objected to by parent or guardian.
8. Summary trial with consent of young persons (juvenile offenders).
9. Summary trial with consent of adult.

SECTIONS

10. Summary conviction on plea of guilty of adult.
11. Restriction on summary dealing with adult charged with indictable offence.
12. Restriction on punishment of child for summary offence.
13. Power of Court to discharge accused without punishment.
14. Right to claim trial by jury in case of offences otherwise triable summarily.
15. Imprisonment in cases of cumulative sentences not to exceed six months.
16. Appeal from summary conviction to Supreme Court.
17. Court of Summary Jurisdiction, where to sit.
18. Special provisions as to warrants of commitment for non-payment of sums of money, and as to warrants of distress.

SUPPLEMENTAL PROVISIONS.

19. Register of Court of Summary Jurisdiction.
20. Regulations as to securities taken in pursuance of Act.
21. Power of Court of Summary Jurisdiction to remand for indictable offences.
22. Procedure before Court of Summary Jurisdiction in case of sureties to keep the peace.

23. Power of Petty Sessional Court with respect to varying order for sureties.
24. Regulations as to indictable offences dealt with summarily.
25. Cost of prosecution of indictable offences dealt with summarily.
26. Power of the Supreme Court to make rules.
27. Not applicable.

Summary Jurisdiction Act, 1879.

PART II.

AMENDMENT OF PROCEDURE.

SECTIONS

28. Procedure on appeal to Supreme Court.
29. Application of provisions respecting appeals to Supreme Court to appeals under prior Acts.
30. Appeal from Court of Summary Jurisdiction by special case.
31. Summary orders.
32. Recovery of civil debts in Court of Summary Jurisdiction.
33. Summons of witness when out of the jurisdiction of a Court of Summary Jurisdiction.
34. Summons or warrant not avoided by death of justice, &c.

SECTIONS

35. Bail of person arrested without a warrant.
36. Provisions as to proceedings, &c.
37. Not applicable.
38. Proof by declaration of service of process, handwriting, &c.
39. Recognizances taken out of Court.
40. Procedure on the execution of distress warrants.
41. Return by order of Court of property taken from prisoner.
42. Local jurisdiction of Court under this Act.
43. General provisions as to local jurisdiction of Courts of Summary Jurisdiction.

PART III.

CONSISTS OF DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

(The sections of the original Act are given in italics at the end of each section.)

PART I.

COURT OF SUMMARY JURISDICTION.

SHORT TITLE.

This Act may be cited for all purposes as "The Summary Jurisdiction Act, 1879."

1. Subject as in this Act mentioned, and notwithstanding any enactment to the contrary, where a Court of Summary Jurisdiction has authority under this Act, or under any other Act, whether past or future to impose imprisonment or to impose a fine for an offence punishable on summary conviction, that Court may, in the case of imprisonment, impose the same without hard labor, and re-

Summary Jurisdiction Act, 1879.

duce the prescribed period thereof, or do either of such acts; and in the case of a fine, if it be imposed as in respect of a first offence, may reduce the prescribed amount thereof.

And where in the case either of imprisonment or a fine there is prescribed a requirement for the offender to enter into his recognizance and to find sureties for keeping the peace, and observing some other condition, or to do any of such things, the Court may dispense with any such requirement or any part thereof.

And where a Court of Summary Jurisdiction has authority under an Act other than this Act, whether past or future, to impose imprisonment for an offence punishable on summary conviction, and has not authority to impose a fine for that offence, that Court then adjudicating on such offence may, notwithstanding, if the Court think that the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding £25 stg. (one hundred and twenty dollars), and not being of such an amount as will subject the offender under the provisions of this Act, in default of payment of the fine, to any greater term of imprisonment than that to which he is liable under the Act authorising the said imprisonment. (*Sec. 4.*)

2. The period of imprisonment imposed by a Court of Summary Jurisdiction under this Act, or under any other Act, whether past or future, in respect of the nonpayment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum, shall, notwithstanding any enactment to the

Summary Jurisdiction Act, 1879.

contrary in any past Act, be such period as in the opinion of the Court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale; that is to say, where the amount of the sum or sums of money adjudged to be paid by a conviction,

Does not exceed two dollars and fifty cents	Seven days.
Exceeds two dollars and fifty cents, but does not exceed five dollars.....	Fourteen days.
Exceeds five dollars, but does not exceed twenty-five dollars.....	One month.
Exceeds twenty-five dollars, but does not exceed one hundred dollars.....	Two months.
Exceeds one hundred dollars.....	Three months.

(1) And such imprisonment shall be without hard labor
 (2), except where hard labor is authorised by the Act on which the conviction is founded, in which case the imprisonment may, if the Court thinks the justice of the case requires it, be with hard labor, so that the term of hard labor awarded do not exceed the term authorised by the said Act. (*Sec. 5.*)

3. Where under any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a Court of Summary Jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and if recovered before a Court of Summary Jurisdiction shall be re-

(1) This provision is also contained in the Summary Jurisdiction Act of 1897.

(a) Local law gives the magistrates authority to order hard labor in all sentences.

Summary Jurisdiction Act, 1879.

covered in the manner in which a sum declared by this Act to be a civil debt recoverable summarily is recoverable under this Act, and not otherwise; and the payment of any costs ordered to be paid by the complainant or defendant in the case of any such complaint shall be enforced in like manner as such civil debt, and not otherwise. (1) (Sec. 6.)

4. A Court of Summary Jurisdiction, by whose conviction or order any sum is adjudged to be paid, may do all or any of the following things; namely,— (2)

(1.) Allow time for the payment of the said sum; and

(2.) Direct payment to be made of the said sum by instalments; and

(3.) Direct that the person liable to pay the said sum shall be at liberty to give to the satisfaction of that Court, or of such other Court of Summary Jurisdiction, or such person as may be specified by that Court, security with or without a surety or sureties for the payment of the said sum. or of

(1) This section and the 35th refer to the recovery of "civil debts" in Court of Summary Jurisdiction.

N.B. Only money recoverable "on complaint" and not "on information," can be thus dealt with, and under this head may be classed all those cases where the redress afforded by the Court is in the nature of a civil remedy, as distinguished from those summary proceedings which partake of a criminal nature, and in which the remedy is by information.

(2) This is a most sensible and humane provision; outport magistrates are aware how desirable it is for the carrying out of the law that they should have authority to receive money in this manner. Great hardships are often inflicted on poor persons through the want of this power. This section will apply to the payment of money in bastardy cases, deserted wives and children, money payable to complainant under Malicious Injuries Act, and other cases of a like nature of money ordered to be paid on a complaint, and such fines generally.

Summary Jurisdiction Act, 1879.

any instalment thereof, and such security may be given and enforced in manner provided by this Act.

Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

A Court of Summary Jurisdiction directing the payment of a sum or of an instalment of a sum may direct such payment to be made at such time or times, and in such place or places, and to such person or persons, as may be specified by the Court; and every person to whom any such sum or instalment is paid, shall as soon as may be, account for and pay over the same to the clerk of the Court, or where there is no clerk of the Court, to the magistrate.

5. Where a fine adjudged by a conviction by a Court of Summary Jurisdiction to be paid does not exceed one dollar and twenty cents, then, except so far as the Court may think fit to expressly order otherwise, an order shall not be made for payment by the defendant to the informant of any costs; and the Court shall, except so far as they think fit to expressly order otherwise, direct all fees payable or paid by the informant to be remitted or repaid to him; the Court may also order the fine or any part thereof to be paid to the informant in or towards the payment of his costs. (*Sec. 8.*)

*Summary Jurisdiction Act, 1879.**The Enforcing of Recognizances.*

This new method of enforcing recognizances or bonds in the same manner as a fine, is a most valuable provision; under the old law magistrates had to proceed by the most roundabout and difficult method of sending these forfeited recognizances to the Supreme Court to be enforced; difficulties and delays always ensued, and the general result was an unmitigated failure of justice; by this new procedure full power is given to magistrates to enforce them, except in the rare cases referred to below in sub-section 3.

6. (1.) Where a recognizance is conditioned for the appearance of a person before a Court of Summary Jurisdiction, or for his doing some other matter or thing to be done in, to, or before a Court of Summary Jurisdiction, or in a proceeding in a Court of Summary Jurisdiction, such Court, if the said recognizance appears to the Court to be forfeited, may declare the recognizance to be forfeited and enforce payment of the sum due under such recognizance in the same manner as if the sum were a fine adjudged by such Court to be paid which the statute provides no means of enforcing, and were ascertained by a conviction:

Provided that at any time before the sale of goods under a warrant of distress for the said sum, the said Court of Summary Jurisdiction, or any other Court of Summary Jurisdiction for the same district, may cancel or mitigate the forfeiture, upon the person liable applying, and giving security to the satisfaction of the Court for the future performance of the condition of the recognizance, and paying or giving security for payment of the costs incurred in respect of the forfeiture, or upon such other conditions as the Court may think just.

(2.) Where a recognizance conditioned to keep the peace or to be of good behavior, or not to do or commit

Summary Jurisdiction Act, 1879.

some act or thing, has been entered into by any person as principal or surety before a Court of Summary Jurisdiction, that Court or any other Court of Summary Jurisdiction acting for the same district, or place, upon proof of the conviction of the person bound as principal by such recognizance of any offence which is in law a breach of the condition of the same, may by conviction adjudge such recognizance to be forfeited, and adjudge the persons bound thereby, whether as principal or sureties, or any of such persons, to pay the sums for which they are respectively bound.

(3.) Except where a person seeking to put in force a recognizance to keep the peace or to be of good behavior, by notice in writing, requires such recognizance to be transmitted to the Supreme Court, the recognizances to which this section applies shall be dealt with in manner in this section mentioned, and, notwithstanding any enactment to the contrary, shall not be transmitted, nor shall the forfeiture thereof be certified, to the Supreme Court.

(4.) All sums paid in respect of a recognizance declared or adjudged by a Court of Summary Jurisdiction in pursuance of this section to be forfeited shall be paid to the clerk of such Court, or the magistrate, and shall be paid and applied by him in the manner in which fines imposed by such Court, in respect of which fines no special appropriation is made, are payable and applicable. (*Sec. 9.*)

Summary Jurisdiction Act, 1870.

CHILDREN, SUMMARY TRIAL OF.

Summary trial of Children for Indictable Offences unless objected to by Parent or Guardian.

7. (1.) Where a child is charged before a Court of Summary Jurisdiction with any indictable offence other than homicide, the Court, if they think it expedient so to do, and if the parent or guardian of the child so charged, when informed by the Court of his right to have the child tried by a jury, does not object to the child being dealt with summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment:

Provided that—

- (a.) A sentence of penal servitude shall not be passed, but imprisonment shall be substituted therefor; and (see Consol. Stat., penal servitude),
- (b.) Where imprisonment is awarded, the term shall not in any case exceed one month; and
- (c.) Where a fine is awarded, the amount shall not in any case exceed ten dollars; and
- (d.) When the child is a male the Court may, either in addition to or instead of any other punishment, adjudge the child to be, as soon as practicable, privately whipped with not more than six strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the child.

Summary Jurisdiction Act, 1879.

The Court must ask the statutable question given below, "Do you desire the child to be tried by a jury, &c.?" but it will be seen by the following sub-section (2) that it is optional to the Court to further fully explain the law to the parent or guardian of the child. In all cases there should be a full explanation given; it may be made in the following manner, or in words to the like effect, "The meaning of this case being dealt with summarily is that we shall proceed to hear the case against the child, and after hearing it, if we find him or her guilty, we shall pronounce judgment; if you claim the right of the child to be tried by a jury, we may bail or commit him (or her) to prison, there to await trial at the next sitting of the Supreme Court, either at St. John's or on circuit, as the Attorney General may direct." Note—No choice is given to the child in the matter.

(2.) For the purpose of a proceeding under this section, the Court of Summary Jurisdiction, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the parent or guardian of the child, and then address a question to such parent or guardian to the following effect: "Do you desire the child to be tried by a jury, and object to the case being dealt with summarily?" with a statement, if the Court think such statement desirable for the information of such parent or guardian, of the meaning of the case being dealt with summarily, and of the Supreme Court at which the child will be tried if tried by a jury.

(3.) Where the parent or guardian of a child is not present when the child is charged with an indictable offence before a Court of Summary Jurisdiction, the Court may, if they think it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian, with a view so far as is practicable of securing his attendance at the hearing of the charge, or the Court may, if they think it expedient so to do, deal with the case summarily.

(Remand may be for 8 days or more); sec. 24, sub-sec. 2.

Summary Jurisdiction Act, 1879.

(4.) This section shall not prejudice the right of a Court of Summary Jurisdiction to send a child to a Reformatory or Industrial School. (1.)

(5.) This section shall not render punishable for an offence any child who is not, in the opinion (2) of the Court before whom he is charged, above the age of seven years, and of sufficient capacity to commit crime. (*Sec. 10.*)

Summary Trial with Consent of Juveniles.

(OF THE AGE OF 12 AND UNDER 16 YEARS.)

(1.) Where a young person is charged before a Court of Summary Jurisdiction with an indictable offence specified in the first column of appendix to this Act, the Court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances, and if the young person charged with the offence, when informed

(1) The Court have no such valuable institutions in the Colony, so the foregoing does not apply.

(2) The Justices may form their opinion of the age of the child from his appearance or from evidence as to his actual age. It is entirely in their discretion to decide whether he is of sufficient capacity to commit a crime. As a general rule of Law, an infant between seven and fourteen years of age is *prima facie* deemed incapable of legal malice, but the ordinary legal presumption may be rebutted by clear evidence of a mischievous discretion. In all such cases the evidence of malice and of a guilty knowledge ought to be strong and clear and beyond all doubt or contradiction. Magistrates should always consider these two questions, Did the accused commit the crime? Had he, at the time of its commission, a guilty knowledge that he was doing wrong? After fourteen years the acts of young persons are subject to the same rules of construction as persons of full age. It will be observed that no option is given to the child. The parent or guardian has to decide whether the accused shall be tried summarily.

by the Court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and in their discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding ten pounds sterling (fifty dollars) or to be imprisoned for any term not exceeding three months, and if the prisoner is a male, and in the opinion of the Court under the age of fourteen, the Court, if they think it expedient so to do, may, either in substitution or in addition to any other punishment, adjudge such person to be, as soon as possible, privately whipped with not more than twelve strokes of a birch rod by a constable in the presence of an inspector or police officer higher in rank than a constable, and also in the presence of the parent or guardian, if he desires to be present.

(2.) For the purpose of proceeding under this section, the Court at any time during the hearing of the case, when they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be read to the accused and then ask him, "Do you desire to be tried by a jury? or do you consent in the case to be dealt with summarily?" (1)

(3.) This section does not prejudice the right of the Court to send the accused to a reformatory or industrial school. (*Sec. 11.*)

(1) The Court should also give the accused full explanation, as at p. 612.

*Summary Jurisdiction Act, 1879.*SUMMARY TRIAL WITH CONSENT OF ADULTS.
(16 YEARS AND UPWARDS.)

Where a person who is an adult is charged before a Court of Summary Jurisdiction with an indictable offence specified in the *second* column of the first schedule to the Act, the Court, if they think it expedient having regard to the character and antecedents of the accused, the nature of the offence and the circumstances of the case, and if the person charged consents may deal summarily with the offence and adjudge such person if found guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding three months, or to pay a fine not exceeding twenty pounds (one hundred dollars.)

For the purpose of a proceeding under this section, the Court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury," or do you "consent to the case being dealt with summarily?" with a statement, if the Court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury.

SUMMARY CONVICTION ON PLEA OF GUILT OF ADULT.

(1.) Where a person, who is an adult, charged before a Court of summary jurisdiction with an indictable offence which is specified in the first column of the First Schedule to this Act, and is not comprised in the second column of

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that schedule, and the Court at any time during the hearing of the case become satisfied that the evidence is sufficient to put the person charged on his trial for the said offence, and further are satisfied (either after such a remand as is provided by this Act or otherwise,) that the case is one which, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, may properly be dealt with summarily, and may be adequately punished by virtue of the powers of this Act, then the Court shall cause the charge to be reduced into writing and read to the person charged, and shall then ask him whether he is guilty or not of the charge; and if such person says that he is guilty, the Court shall thereupon cause a plea of guilty to be entered, and adjudge him to be imprisoned, with or without hard labour, for any term not exceeding six months.

(2.) The Court, before asking, in pursuance of this section, the person charged whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he pleads guilty he will be dealt with summarily, and that if he does not plead or answer, or pleads not guilty, he will be dealt with in the usual course; with a statement, if the Court thinks such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily or in the usual course, and of the Supreme Court, at which such person will be tried by a jury. The Court shall further state to such person to the effect that he is not obliged to say anything unless he desires to do so, but that whatever he says will be taken down in writing,

and may be given in evidence against him: upon his trial, and shall give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat. (1.)

(3.) If the prisoner does not plead guilty, whatever he says in answer shall be taken down in writing and read over to him, and signed by a Justice constituting or forming part of the Court, and kept with the depositions of the witnesses, and transmitted with them in manner required by law, and afterwards upon the trial of the prisoner may, if necessary, be given in evidence against him without further proof thereof, unless it is proved that the Justice purporting to have signed the same did not in fact sign the same.

(1) CAUTION.—*Prisoner*, I am about to ask you whether you are guilty or not of the charge; but before I do so I must tell you that you are not obliged to plead or answer, and that if you plead guilty you will be dealt with summarily, and that if you do not plead or answer or plead not guilty, you will be dealt with in the usual course, the meaning of which is that if you plead guilty, you will be tried by the Court, but if the case is to be dealt with in the usual course you will, if sent to trial, be brought before a jury in the Supreme Court; and I must further say to you that you are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you. I also give you clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to you to induce you to make any admission of your guilt. But that whatever you now say may be given in evidence against you, notwithstanding such promise or threat. Are you guilty or not guilty of the charge?

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14.—Where a person who is an adult is charged before a Court of Summary Jurisdiction with any indictable offence specified in the First Schedule to this Act, and it appears to the Court that the offence is one which, owing to a previous conviction on indictment of the person so charged, is punishable by law with penal servitude, (1) the Court shall not deal with the case summarily in pursuance of this Act. (a.) It must be an indictment if on a summary conviction jurisdiction is not taken away.

15.—A child on summary conviction for an offence punishable on summary conviction under this Act, or under any other Act, whether past or future, shall not be imprisoned for a longer period than one month, nor fined a larger sum than forty shillings, \$10.

16.—If upon the hearing of a charge for an offence punishable on summary conviction under this Act, or under any other Act, whether past or future, the Court of Summary Jurisdiction think that though the charge is proved the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment,—

(1.) The Court, without proceeding to conviction, may dismiss the information, and, if the Court think fit, may order the person charged to pay such damages, not exceeding forty shillings (\$10) and such costs of the proceeding, or either of them, as the Court think reasonable; or,

(2.) The Court upon convicting the person charged

(1.) See section 8, cap. 63, *Consol. Stat., Second Series*, as regards penal servitude.

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may discharge him conditionally on his giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the Court think reasonable:

Provided that this section shall not apply to an adult convicted in pursuance of this Act of an offence of which he has pleaded guilty, and of which he could not, if he had not pleaded guilty, be convicted by a court of summary jurisdiction.

17.—Not applicable.

18.—A Court of Summary Jurisdiction shall not, by cumulative sentences of imprisonment (other than for default of finding sureties) to take effect in succession in respect of several assaults committed on the same occasion, impose on any person imprisonment for the whole exceeding six months.

19.—(1) Where, in pursuance of any Act, whether past or future, any person is adjudged by a conviction or order of

(1) I think this sec. 19 is not applicable to this colony. There is no appeal in Summary Jurisdiction unless specifically given by Statute. Under our local laws appeals in cases triable summarily are not given except in cases for breach of the license laws, bastardy, stealing codfish, breach of revenue laws, &c., and at p. 5 Consol. Stat. (N. S.) it is provided that "wherever a penalty not exceeding \$200, or sentence of imprisonment not exceeding six months, may be imposed for any offence; unless otherwise provided, it shall be held that such offence may be tried in a summary manner (by implication without an appeal) before, and the penalty or imprisonment imposed therefor by a Justice of the Peace." Our laws give no appeals in Summary Jurisdiction except in these few cases, and where the local and Imperial law clash, the local law must prevail.

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a court of summary jurisdiction to be imprisoned without the option of a fine, either as a punishment for an offence, or, save as hereinafter mentioned, for failing to do or to abstain from doing any act or thing required to be done or left undone, and such person is not otherwise authorised to appeal to the Supreme Court and did not plead guilty, or admit the truth of the information or complaint, he may, notwithstanding anything in the said Act, appeal to the said Court against such conviction or order:—

Provided that this section shall not apply where the imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognizance, or for the giving of any security.

20.—A case arising under this Act, or under any other Act, whether past or future, shall not be heard, tried, determined, or adjudged by a Court of Summary Jurisdiction, except when sitting in open Court. (1)

(1) None of the remaining provisions of this 20th sec. about Petty Sessions and occasional Court Houses apply. Trials under Summary Jurisdiction must be held in the Court House or in the building generally used for that purpose, and when so used it is an open Court accessible to the public; also in cases where indictable offences are proceeded with summarily under this Act, the Court is an open Court. When taking the preliminary enquiry on an indictable offence, the Court was not by Statute an open Court; it is now held that even on this enquiry the magistrates sit in open Court and the general public cannot be excluded. In taking depositions to found a charge or in other cases where the accused is not necessarily present, proceedings may be in private.

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SPECIAL PROVISION AS TO WARRANTS OF COMMITMENT AND DISTRESS.

21.—A Court of Summary Jurisdiction to whom application is made, either to issue a warrant of distress for any sum adjudged to be paid by a conviction or order or to issue a warrant for committing a person to prison for non-payment of a sum of money adjudged to be paid by a conviction, or in the case of a sum, not a civil debt, by an order, or for default of sufficient distress to satisfy any such sum may, if the Court deem it expedient *postpone* the issue of a warrant until such time, and on such conditions, if any, as the Court may seem just.

(2.) The wearing apparel and bedding of a person and his family, and to the value of £5 stg. (\$25) the tools and implements of his trade shall not be taken under a distress by a Court of Summary Jurisdiction. (1)

(3.) Where a person is adjudged by conviction or order to pay a sum of money, not a civil debt, or in default distress to be issued and it appear to the Court that the person has no goods whereon to levy such distress or that the distress will be more injurious to his family than impris-

(1) This is a very just and humane provision, it will be observed that wearing apparel and bedding cannot be taken under any circumstances, and only tools, etc., over £5 in value.

By the 67th Rule of the Judicature Act, Consol. Stat., N.S., p. 382, it is also provided: That the working tools and implements of trade of any person, his fishing skiff or punt, the necessary cooking apparatus (which would probably include the cooking stove) the bedding and wearing apparel of himself and his family shall not in any case be liable to, or be taken under attachment or execution.

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ment such Court instead of issuing a distress warrant may order said person to be imprisoned for a period for which he is liable in default of sufficient distress.

(4.) Where in such cases it is made to appear to the Court that either by payment of part of the sum whether in instalments or otherwise, the amount due has been reduced to such an extent that the unsatisfied balance if it had constituted the original amount adjudged to be paid would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such condition or order. The Court may revoke the order of imprisonment and order the defendant to be imprisoned for a term not exceeding such less maximum term instead of the original term. (1)

22.—Clerks of the Court of Summary Jurisdiction are ordered to keep a register of convictions, or orders, etc. Most of it is not applicable.

REGULATIONS AS TO SECURITIES TAKEN UNDER THE
ACT.

23.—(1.) A person shall give security under this Act, whether as principal or surety, either by the deposit of money with the Clerk of the Court, or by an oral or written acknowledgment of the undertaking or condition by which and of the sum for which he is bound, in such manner and form as may be for the time being directed by any rule made in pursuance of this Act, and evidence of such

(1) NOTE.—This means that the amount adjudged can be taken in instalments and the original term of imprisonment altered in proportion when a lesser sum is due.

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security may be provided by entry thereof in the register under this Act of proceedings of a Court of Summary Jurisdiction or otherwise as may be directed by such rule.

(2.) Any sum which may become due in pursuance of a security under this Act from a surety shall be recoverable summarily, in manner directed by this Act with respect to a civil debt, on complaint by a constable or by the Clerk of the Court directing such security to be given, or by some other person authorised for the purpose by the Court or any other Court of Summary Jurisdiction for the same district.

(3.) A Court of Summary Jurisdiction may enforce payment of any sum due by a principal in pursuance of a security under this Act which appears to such Court to be forfeited, in like manner as if that sum were adjudged by a Court of Summary Jurisdiction to be paid as a fine which the statute provides no mode of enforcing, if the security was given for a sum adjudged by a conviction, and in any other case in like manner as if it were a sum adjudged by a Court of Summary Jurisdiction to be paid as a civil debt; provided that before a warrant of distress for the sum is issued, such notice of the forfeiture shall be served on the said principal, and in such manner as may be directed for the time being by rules under this Act, and subject thereto by the Court authorising the security, or by any Court to whom application is made for the issue of the warrant.

(4.) Any sum paid by a surety on behalf of his principal in respect of a security under this Act, together with all costs charges and expenses incurred by such surety in respect of that security, shall be deemed a civil debt due

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to him from the principal, and may be recovered before a Court of Summary Jurisdiction in manner directed by this Act with respect to the recovery of a civil debt which is recoverable summarily.

(5.) Where security is given under this Act for payment of a sum of money, the payment of such sum shall be enforced by means of such security in substitution for other means of enforcing such payment.

REMAND.

24.—(1.) Where a person is charged before a Court of Summary Jurisdiction with an indictable offence, with which a Court of Summary Jurisdiction has or may have under the circumstances in this Act mentioned power to deal summarily, the Court before whom such person is charged, without prejudice to any other power that it may possess,—

(a.) may, for the purpose of ascertaining whether it is expedient to deal with the case summarily, either before or during the hearing of the case, from time to time adjourn the case and remand the person accused; and

(2.) A person may be remanded under this section for eight days.

SURETIES TO KEEP THE PEACE.

25.—The power of a Court of Summary Jurisdiction, upon complaint of any person, to adjudge a person to enter into a recognizance and find sureties to keep the peace or to be of good behaviour towards such first-mentioned person, shall be exercised by an order upon complaint, and the summary Jurisdiction Acts shall apply ac-

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cordingly, and the complainant and defendant and witnesses may be called and examined and cross-examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaints. (1)

The Court may order the defendant, in default of compliance with the order, to be imprisoned for a period not exceeding six months.

26.—Gives power to a Petty Sessional Court to review the decision of another Court in such cases (*not applicable.*)

27.—Where an indictable offence is under the circumstances in this Act mentioned authorised to be dealt with summarily,—

(1.) The procedure shall, until the Court assume the power to deal with such offence summarily, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence, but when and so soon as the Court assume the power to deal with such offence summarily, the procedure shall be the same from and after that period as if the offence were an offence punishable on summary conviction and not on indictment, and the provisions of the Acts relating to offences punishable on summary conviction shall apply accordingly; and

(2.) The evidence of any witness taken before the Court assumed the said power need not be taken again, but every such witness shall, if the defendant so require it, be recalled for the purpose of cross-examination; and

(1) This provision is new. Formerly if the Justice were satisfied that there had been a threat, the party charged was not allowed to contract the complainants. Now the whole question can be enquired into.

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(3.) The conviction for any such offence shall be of the same effect as a conviction for the offence on indictment, and the Court may make the like order for the restitution of property as might have been made by the court before whom the person convicted would have been tried if he had been tried on indictment; and

(4.) Where the Court have assumed the power to deal with the case summarily, and dismiss the information, they shall, if required, deliver to the person charged a copy certified under their hands of the order of such dismissal, and such dismissal shall be of the same effect as an acquittal on a trial on indictment for the offence; and

(5.) The conviction shall contain a statement either as to the plea of guilty of an adult, or in the case of a child as to the consent or otherwise of his parent and guardian, and in the case of any other person of the consent of such person, to be tried by a Court of Summary Jurisdiction; and

(6.) The order of dismissal shall be transmitted to and filed by the Clerk of the Peace in like manner as the conviction is required by the Summary Jurisdiction Act, 1848, to be transmitted and filed, and together with the order of dismissal or the conviction, as the case may be, there shall be transmitted to and filed by such clerk in each case the written charge, the depositions of the witnesses, and the statement, if any, of the accused.

28.—Costs of prosecution (not applicable).

29.—(1.) The Lord High Chancellor of Great Britain;

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(here the Supreme Court) may from time to time make, and when made, rescind alter and add to, rules.

30, 31 and 32.—Not applicable.

33.—*Stating a case.* (See ante, p. 545, stating a case.)

34.—(1.) Where a power is given by any future Act to a Court of Summary Jurisdiction of requiring any person to do or abstain from doing any act or thing other than the payment of money, or of requiring any act or thing to be done or left undone other than the payment of money, and no mode is prescribed of enforcing such requisition, the Court may exercise such power by an order or orders, and may annex to any such order any condition as to time or mode of action which the Court may think just, and may suspend or rescind any such order on such undertaking being given or condition being performed as the Court may think just, and generally may make such arrangement for carrying into effect such power as to the Court seems meet.

(2.) A person making default in complying with an order of a Court of Summary Jurisdiction in relation to any matter arising under any future Act other than the payment of money, shall be punished in the prescribed manner, or if no punishment is prescribed, may in the discretion of the Court be ordered to pay a sum (to be enforced as a civil debt recoverable summarily under this Act) not exceeding one pound (\$5) for every day during which he is in default, or to be imprisoned until he has remedied his default:

Provided that a person shall not, for non-compliance

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with the requisition of a Court of Summary Jurisdiction, whether made by one or more orders, to do or abstain from doing any act or thing, be liable under this section to imprisonment for a period or periods amounting in the aggregate to more than two months, or to the payment of any sums exceeding in the aggregate twenty pounds, \$100.

CIVIL DEBT.

35.—Any sum declared by this Act, or by any future Act, to be a civil debt, which is recoverable summarily, or in respect of the recovery of which jurisdiction is given by such Act to a Court of Summary Jurisdiction, shall be deemed to be a sum for payment of which a Court of Summary Jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts: Provided as follows:

- (1.) A warrant shall *not* be issued for apprehending any person for failing to appear to answer any such complaint; and
- (2.) An order made by a Court of Summary Jurisdiction for the payment of any such civil debt as aforesaid or of any instalment thereof, or for the payment of any costs in the matter of any such complaint, whether ordered to be paid by the complainant or defendant, shall not, in default of distress or otherwise, be enforced by *imprisonment*, unless it be proved to the satisfaction of such Court that the person making default in payment of such civil debt instalment or costs either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has re-

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fused or neglected, or refuses or neglects, to pay the same, and in any such case the Court shall have the same power of imprisonment as a county Court would for the time being have under the Debtors Act, 1869, for default of payment if such debt had been recovered in that Court, but shall not have any greater power. This means not exceeding six weeks—less should be generally given.

Proof of the means of the person making default may be given in such manner as the Court to whom application is made for the commitment to prison think just, and for the purposes of such proof the person making default and any witnesses may be summoned and examined on oath according to the rules for the time being in force under this Act in relation to the summoning and examination of witnesses.

36.—Not applicable.

37.—A warrant or summons issued by a Justice of the Peace under the Summary Jurisdiction Act, 1848, or any other Act, whether past or future, or otherwise, shall not be avoided by reason of the Justice who signed the same dying or ceasing to hold office.

BAIL.

38.—See p. 71. Bail.—Persons arrested without a warrant, etc.

39.—The following enactments shall apply to proceedings before Courts of Summary Jurisdiction; (that is to say,)

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- (1.) The description of any offence in the words of the Act, or any order, bye-law, regulation, or other document creating the offence, or in similar words, shall be sufficient in law; and
- (2.) Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act, order, bye-law, regulation, or other document creating the offence, may be proved by the defendant, but need not be specified or negatived in the information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant; and
- (3.) A warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there is a good and valid conviction or order to sustain the same; and
- (4.) A warrant of distress shall not be deemed void by reason only of any defect therein, if it be therein alleged that a conviction or order has been made, and there is a good and valid conviction or order to sustain the same, and a person acting under a warrant of distress shall not be deemed a trespasser from the beginning by reason only of any defect in the warrant, or of any irregularity in the execution of the warrant, but this enactment shall not

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prejudice the right of any person to satisfaction for any special damage caused by any defect in or irregularity in the execution of a warrant of distress, so however that if amends are tendered before action brought, and if the action is brought are paid into Court in the action, and the plaintiff does not recover more than the sum so tendered and paid into Court, the plaintiff shall not be entitled to any costs incurred after such tender, and the defendant shall be entitled to costs, to be taxed as between solicitor and client; and

- (5.) All forfeitures not pecuniary which are incurred in respect of an offence triable by a Court of Summary Jurisdiction, or which may be enforced by a Court of Summary Jurisdiction, may be sold or disposed of in such manner as the Court having cognizance of the case may direct, and the proceeds of such sale shall be applied in the like manner as if the proceeds were a fine imposed under the Act on which the proceeding for the forfeiture is founded.

40.—A writ of certiorari or other writ shall not be required for the removal of any conviction, order, or other determination, in relation to which a special case is stated for examining the judgment or determination of a Superior Court.

41.—In a proceeding within the jurisdiction of a Court of Summary Jurisdiction, without prejudice to any other mode of proof, service on a person of any summons, notice, process, or document required or authorised to be served,

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and the handwriting and seal of any Justice of the Peace or other officer or person on any warrant, summons, notice, process, or document, may be proved by a solemn declaration taken before a Justice of the Peace, or before a Commissioner to administer oaths in the Supreme Court, or before a Clerk of the Peace; and any declaration purporting to be so taken shall, until the contrary is shown, be sufficient proofs of the statements contained therein, and shall be received in evidence in any Court or legal proceeding, without proof of the signature or of the official character of the person or persons taking or signing the same; and the fee, if any, for taking such declaration shall be a sum not exceeding one shilling (25 cents).

42.—Bail (see Bail, ante p. 71).

43.—The following regulations shall be enacted with respect to warrants of distress issued by a Court of Summary Jurisdiction:

(1.) A warrant of distress shall be executed by or under the direction of a constable; and

(2.) Save so far as the person against whom the distress is levied otherwise consents in writing, the distress shall be sold by public auction, and five clear days at the least shall intervene between the making of the distress and the sale, and where written consent is so given as aforesaid the sale may be made in accordance with such consent; and

(3.) Subject as aforesaid, the distress shall be sold within the period fixed by the warrant, and if no period is so fixed then within the period of fourteen days from the

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date of the making of the distress, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress, are sooner paid; and

(4.) Subject to any directions to the contrary given by the warrant of distress, where the distress is levied on household goods the goods shall not, except with the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark; and any person removing any goods so marked, or defacing or removing the said mark, shall on summary conviction be liable to a fine not exceeding five pounds (\$25); and

(5.) Where a person charged with the execution of a warrant of distress wilfully retains from the produce of any goods sold to satisfy the distress, or otherwise exacts, any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable on summary conviction to a fine not exceeding five pounds; and

(6.) A written account of the costs and charges incurred in respect of the execution of any warrant of distress shall be sent by the constable charged with the execution of the warrant as soon as practicable to the Clerk of the Court of Summary Jurisdiction issuing the warrant; and it shall be lawful for the person upon whose goods the distress was levied, within one month after the levy of the distress, to inspect such account without fee or reward at any reason-

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able time to be appointed by the Court, and to take a copy of such account; and

(7.) A constable charged with the execution of a warrant of distress shall cause the distress to be sold, and may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the overplus, if any, after retaining the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant; and

(8.) Where a person pays or tenders to the constable charged with the execution of a warrant of distress the sum mentioned in such warrant, or produces the receipt for the same of the Clerk of the Court of Summary Jurisdiction issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the constable shall not execute the warrant.

44.—Where any property has been taken from a person charged before a Court of Summary Jurisdiction with any offence punishable either on indictment or on summary conviction, a report shall be made by the police to such Court of Summary Jurisdiction of the fact of such property having been taken from the person charged and of the particulars of such property, and the Court shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the person charged, direct such property, or any portion thereof, to be returned to the person charged or to such other person as he may direct.

45.—Local Jurisdiction (not applicable.)

46.—For the purposes of the trial of any offence punishable on summary conviction under this Act or under any other Act, whether past or future, the following provisions shall have effect—

Any offence which is authorised by this section to be tried by any Court of Summary Jurisdiction may be dealt with, heard, tried, determined, adjudged, and punished as if the offence had been wholly committed within the jurisdiction of such Court.

PART III.

DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

Special Definitions.

47.—The provisions of this Act with respect to a sum adjudged to be paid by an order shall apply, so far as circumstances admit, to a sum in respect of which a Court of Summary Jurisdiction can issue a warrant of distress without an information or complaint under the Summary Jurisdiction Act, 1848, in like manner as if the said sum were a civil debt; and the provisions of this Act with respect to the hearing, trying, determining, and adjudging by a Court of Summary Jurisdiction when sitting in open Court shall apply to the hearing, trying, determining, and adjudging by a Court of Summary Jurisdiction of an application for the issue of any such warrant.

The provisions of this Act with respect to the period of imprisonment to be imposed in respect of the nonpayment of a sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy

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any such sum, shall apply to the period of imprisonment to be imposed in respect of the non-payment of any sum of money adjudged to be paid by an order of a Court of Summary Jurisdiction or in respect of the default of a sufficient distress to satisfy any such sum, where such sum is not a civil debt nor enforceable as a civil debt.

48.—In this Act, if not inconsistent with the context, the following expressions have the meanings herein-after respectively assigned to them; that is to say,

The expression "child" means a person who in the opinion of the court before whom he is brought is under the age of twelve years:

The expression "young person" means a person who in the opinion of the court before whom he is brought is of the age of twelve years and under the age of sixteen years:

The expression "adult" means a person who in the opinion of the Court before whom he is brought is of the age of sixteen years or upwards.

The expression "person" includes a child, young person, and adult, and also includes a body corporate:

The expression "guardian," in relation to a child, includes any person who, in the opinion of the court having cognizance of any case in which a child is concerned, has for the time being the charge of or control over such a child:

The expression "prescribed" means prescribed or provided by any Act which relates to any offences, penalties, fines, costs, sums of money, orders, proceedings, or mat-

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ters, to the punishment, recovery, making, or conduct of which the Summary Jurisdiction Acts expressly or impliedly apply or may be applied:

The expression "past Act" means any Act passed before the commencement of this Act, exclusive of this Act:

The expression "future Act" means any Act passed after the commencement of this Act:

The expression "fine" includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction:

The expressions "sum adjudged to be paid by a conviction" and "sum adjudged to be paid by an order" respectively include any costs adjudged to be paid by the conviction or order, as the case may be, of which the amount is ascertained by such conviction or order.

General Definitions.

49.—In this Act and any future Act, if not inconsistent with the context, the following expressions shall have the meanings hereinafter respectively assigned to them; that is to say,

The expression "The Summary Jurisdiction Act, 1848," shall mean the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of Justices of the Peace out of sessions within England and Wales with respect to summary convictions and orders:"

The expression "The Summary Jurisdiction Acts" and

Summary Jurisdiction Act, 1879.

the expression "The Summary Jurisdiction (English) Acts" shall respectively mean the Summary Jurisdiction Act, 1848, and this Act and any Act, past or future, amending the Summary Jurisdiction Act, 1848, or this Act:

The expression "Court of Summary Jurisdiction" shall mean—Any Justice or Justices of the Peace or other Magistrate, by whatever name called, to whom jurisdiction is given by or who is or are authorised to act under the Summary Jurisdiction Acts or any of such Acts.

Application of Acts.

50.—The following regulations shall be made for the purpose of facilitating the application of the Summary Jurisdiction Acts to any future Act; that is to say,

(1.) Where in any future Act, any offence is directed or authorised to be prosecuted summarily or on summary conviction, or any fine is directed or authorised to be recovered summarily or on summary conviction, or any other words are used implying that such offence is to be prosecuted or fine is to be recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly; and

(2.) Where in any future Act any sum of money is directed or authorised to be recovered before a Court of Summary Jurisdiction, or on complaint made to a Court of Summary Jurisdiction, or words are used (whether by authorising the sum to be recovered summarily or in a summary manner or otherwise) which imply that such sum of money is to be recovered before a Court of Sum-

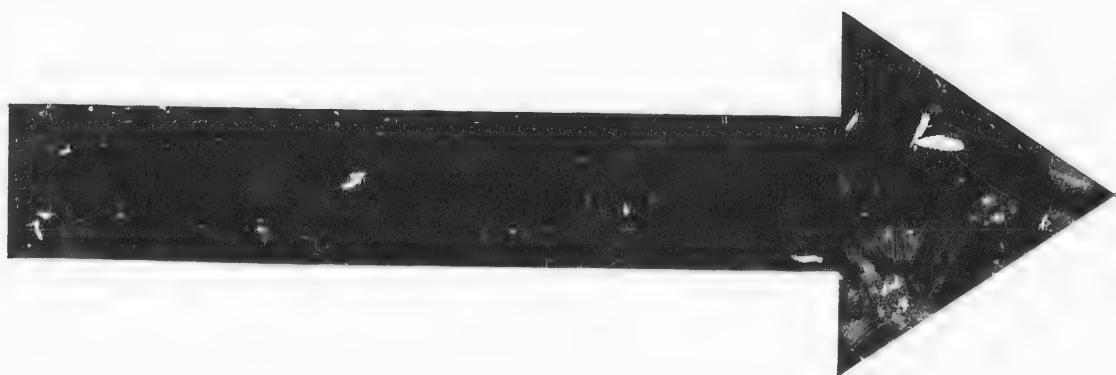
Summary Jurisdiction Act, 1879.

mary Jurisdiction or in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly; and

(3.) Where in any future Act a Court of Summary Jurisdiction is authorised to order or require a person to do or abstain from doing any act or thing other than the payment of a sum of money; or where in pursuance of any such Act any act or thing other than the payment of a sum of money is required or authorised by an order of a Court of Summary Jurisdiction to be done, or is declared capable of being enforced summarily, or by summary order; or where in any such Act any words are used implying that such act or thing is to be enforced in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly.

This Act shall be construed as one with the Summary Jurisdiction Act of 1848.

Simple Larceny (see under the head *Larceny* post).



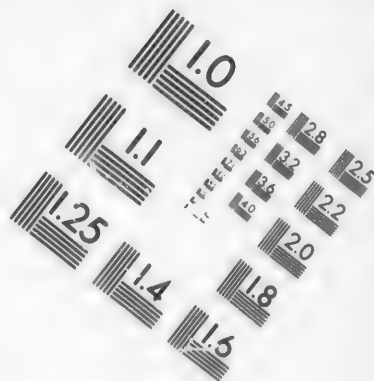
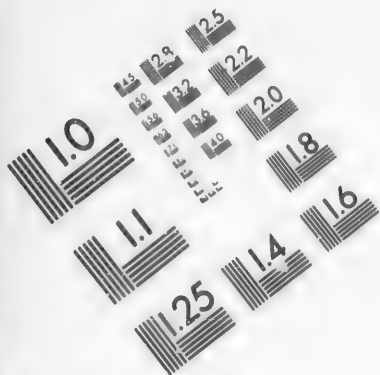
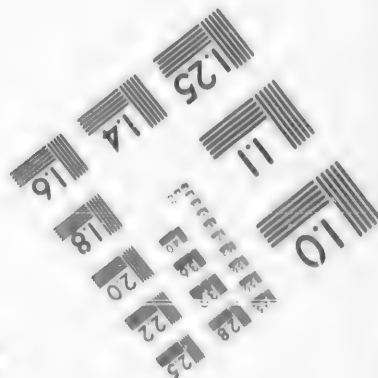
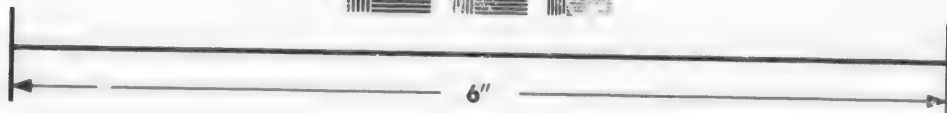
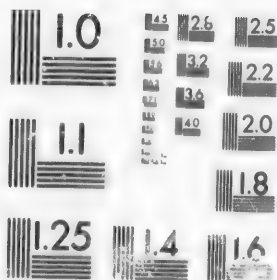


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*Summary Jurisdiction Act, 1879.***SCHEDULES.****FIRST SCHEDULE.**

INDICTABLE OFFENCES WHICH CAN BE DEALT WITH
SUMMARILY UNDER THIS ACT.

FIRST COLUMN.	SECOND COLUMN.
Young Persons consenting and Adults pleading guilty.	Adults complaining.
1. Simple larceny. 2. Offences declared by any Act for the time being in force to be punishable as simple larceny. 3. Larceny from or stealing from the person. 4. Larceny as a clerk or servant. 5. Embezzlement by a clerk or servant.	1. Simple larceny, where the value of the whole of the property alleged to have been stolen does not in the opinion of the Court before whom the charge is brought exceed forty shillings. 2. Offences declared by any Act for the time being in force to be punishable as simple larceny, where the value of the whole of the property alleged to have been stolen, destroyed, injured, or otherwise dealt with by the offender does not in the opinion of the Court before whom the charge is brought exceed forty shillings. 3. Larceny from or stealing from the person, where the value of the whole of the property alleged to have been stolen does not in the opinion of the Court before whom the charge is brought exceed forty shillings. 4. Larceny as a clerk or servant, where the value of the whole of the property alleged to have been stolen does not in the opinion of the Court before whom the charge is brought exceed forty shillings. 5. Embezzlement by a clerk or servant, where the value of the whole of the property alleged to have been embezzled does not in the opinion of the Court before whom the charge is brought exceed forty shillings.

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Summary Jurisdiction Act, 1879.

FIRST COLUMN.

Young Persons consenting and
Adults pleading Guilty.

6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the ninety-first and ninety-fifth sections of the Larceny Act, 1861, (being the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six), or in either of such sections.

7. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act for the time being in force to be punishable, as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant.

8. Attempt to commit simple larceny, or an offence declared by any Act for the time being in force to be punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant.

SECOND COLUMN.

Adults consenting.

6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the ninety-first and ninety-fifth sections of the Larceny Act, 1861, (being the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six), or in either of such sections, where the value of the whole of the property alleged to have been received does not in the opinion of the Court before whom the charge is brought exceed forty shillings.

7. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act for the time being in force to be punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant, where the value of the whole of the property which is the subject of the alleged offence does not in the opinion of the Court before whom the charge is brought exceed forty shillings.

8. Attempt to commit simple larceny, or an offence declared by any Act for the time being in force to be punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant.

Summary Jurisdiction Act, 1879.

SECOND SCHEDULE.

Section and Chapter.	Title.	Extent of Repeal.
10 & 11 Vict. c. 82 -	An Act for the more speedy trial and punishment of juvenile offenders.	The whole Act.
12 & 13 Vict. c. 43 -	An Act to facilitate the performance of the duties of Justices of the Peace out of sessions within England and Wales with respect to summary convictions and orders.	The following words in section thirty-five: "Nor to any information or complaint or other proceeding under or by virtue of any of the statutes relating to Her Majesty's Revenue of Excise or Customs, Stamps, Taxes, or Post Office."
13 & 14 Vict. c. 37 -	An Act for the further extension of summary jurisdiction in cases of Larceny.	The whole Act, in so far as relates to England.
18 & 19 Vict. c. 126 -	An Act for diminishing expenses and delay in the administration of Criminal Justice in certain cases.	The whole Act, in so far as relates to England, except sections eighteen, twenty, twenty-two, twenty-three, and twenty-four.

Session

27 & 28

28 & 29

31 & 32

Summary Jurisdiction Act, 1879.

SECOND SCHEDULE—(concluded.)

Session and Chapter.	Title.	Extent of Repeal.
27 & 28 Vict. c. 110 -	An Act for the amendment of the law relating to the mitigation of penalties.	The whole Act, so far as relates to England.
28 & 29 Vict. c. 127 -	An Act to amend the law relating to small penalties.	The whole Act.
31 & 32 Vict. c. 116 -	An Act to amend the law relating to Larceny and Embezzlement.	Section two, in so far as relates to England.

FORMS.

FORMS UNDER THE SUMMARY JURISDICTION ACT, 1879.

I have given most of the Forms which are necessary for the carrying out of this Act. For the ordinary summons, warrant, committments, etc., the Forms given under the Summary Jurisdiction Act, 1848, commencing at p. 581, will be sufficient. All forms should be headed:

Newfoundland,

—— District,

—— To wit:

And should be signed,—

J. P., for the said District.
or Stipendiary Magistrate.

(L.S.)

Summary Jurisdiction Act, 1879.

FORMS.

I.

SUMMONS FOR FORFEITURE OF RECOGNIZANCE.

Newfoundland,

District,

To wit:

To *A. B.* of ,

You are hereby summoned to appear before the Court of Summary Jurisdiction sitting at on day the day of , at the hour of in the noon, to show cause why the recognizance entered into the day of whereby you are bound to pay the sum of should not be adjudged to be forfeited.

Dated the day of one thousand hundred and

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

Summary Jurisdiction Act, 1879.

2

SUMMONS TO VARY SURETIES, ETC.

To *A. B.* of ,

You are hereby summoned to appear before the Court of Summary Jurisdiction sitting at on day the day of , at the hour of in the noon, to show cause why the order made by the Court of Summary Jurisdiction aforesaid [*or sitting at*], on the day of , against to find suret should not be varied or otherwise dealt with.

Dated the day of one thousand hundred and

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

3

SUMMONS TO WITNESS.

To *E. F.*

A. B. has been charged by for that he on the day of , at in the aforesaid, did

And it appearing to me by the oath [*or affirmation*] of that you are likely to give material evidence therein on behalf of the informant [*or complainant or defendant*], and will not voluntarily appear for that purpose.

Summary Jurisdiction Act, 1879.

You are therefore hereby summoned to appear before the Court of Summary Jurisdiction sitting at , on day the day of , at the hour of in the noon, to testify what you know in such matter.

Dated the day of one thousand hundred and

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

4

CONVICTION (FORFEITED RECOGNIZANCE).

In the

Before the Court of Summary Jurisdiction sitting at .

The day of one thousand hundred and .

A. B. hereinafter called the defendant was, by his recognizance entered into the day of , bound in the sum of , and his sureties, *C. D.* and *E. F.*, in the sum of each, the condition of the recognizance being that the said defendant should :

And it being now proved that the defendant was, on the day of , convicted of the offence of having , the same being a breach of the said condition :

It is therefore adjudged that the said recognizance be forfeited, and that the said pay to the sum of , and the further sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of] :

Summary Jurisdiction Act, 1879.

And in default of payment it is ordered that the sum due from the said under this adjudication be levied by distress and sale of his goods, and in default of sufficient distress that he be imprisoned in Her Majesty's prison at for the space of , unless the said sums [and all costs and charges of the [said distress and] commitment and of his conveyance to the said prison] be sooner paid.

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

5

CONVICTION OF CHILD FOR INDICTABLE OFFENCE.

In the

Before the Court of Summary Jurisdiction sitting at .

The day of one thousand hundred and .

A. B. hereinafter called the defendant being a child within the meaning of the Summary Jurisdiction Act, 1879, and above the age of seven years, is this day convicted, without objection of the parent or guardian, for that he, on the day of , at , in the aforesaid, did .

And it is adjudged that [*proceed as in other forms of*

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Summary Jurisdiction Act, 1879.

conviction; if whipping is ordered, insert either in addition to or in substitution for any other punishment,—

And that the defendant, being a male child be, as soon as practicable, privately whipped with strokes of a birch rod].

J. P.,

(L.S.)

6

CONVICTION (BY CONSENT) FOR INDICTABLE OFFENCE.

In the

Before the Court of Summary Jurisdiction sitting at .

The day of one thousand hundred and .

A. B. hereinafter called the defendant being an adult [or a young person] within the meaning of the Summary Jurisdiction Act, 1879, is this day charged for that he, on the day of , at , in the aforesaid, did :

The defendant, having consented to be dealt with summarily, is convicted of the said offence:

And it is adjudged that [*proceed as in other forms of conviction; if whipping is ordered, insert either in addition to or in substitution for any other punishment,—*

And that the defendant, being a male under the age of 14 years, be, as soon as practicable, privately whipped with strokes of a birch rod].

J. P.,

(L.S.)

7

CONVICTION (ON PLEA OF GUILTY) FOR INDICTABLE OFFENCE.

In the
Before the Court of Summary Jurisdiction sitting at
The day of one thousand hundred
and

A. B., hereinafter called the defendant, is this day charged
for that he on the day of , at in the
aforesaid, did :

And the defendant having pleaded guilty to the charge,
is convicted of the offence, and is adjudged to be impris-
oned in Her Majesty's prison at , and there kept [*to*
hard labour] for the space of

[*If costs are ordered add :—*

And it is ordered that the defendant pay to the
sum of for costs [by instalments of for every
days, the first instalment to be paid] forthwith [*or*
on the day of]:

And in default of payment it is ordered that the sum due
be levied by distress and sale of the defendant's goods, and
in default of sufficient distress that the defendant be im-
prisoned in the said prison for the space of commen-
cing at the termination of the imprisonment before adjud-
ged, unless the said sum [and all costs and charges of the
[said distress and] commitment, and of his conveyance to
the said prison] be sooner paid.]

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

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Summary Jurisdiction Act, 1879.

8

CONVICTION (WITH SECURITY).

In the

Before the Court of Summary Jurisdiction sitting at . . .

The . . . day of . . . one thousand . . . hundred
and . . .

A. B., hereinafter called the defendant is this day convicted for that he on the . . . day of . . . , at . . . in the aforesaid, did . . . :

But the Court being of opinion that the said offence was of so trifling a nature that it is inexpedient to inflict any [or any other than a nominal] punishment, and the defendant having given security to the satisfaction of this Court to appear for sentence when called upon [or to be of good behaviour], he is discharged :

If costs are ordered, add :—

And it is ordered that the defendant pay to the said . . . the sum of . . . for costs [by instalments of . . . for every . . . days, the first instalment to be paid] forthwith [or on the . . . day of . . .] :

And in default of payment it is ordered that the sum due be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in Her Majesty's prison at . . . for the space of . . . unless the said sum [and all costs and charges of the [paid distress and] commitment, and of his conveyance to the said prison] be sooner paid.]

J. P.,

(*L.S.*)

or Stipendiary Magistrate for the District aforesaid.

9

ORDER FOR MONEY (NOT A CIVIL DEBT.)

In the

Before the Court of Summary Jurisdiction sitting at .

The day of one thousand hundred
and .

A. B., having made a complaint that *C. D.*, hereinafter
called the defendant on the day of , at ,
within the aforesaid, did :

On hearing the said complaint, it is ordered that the de-
fendant pay to the said the sum of , and also
the sum of for costs [by instalments of for
every days, the first instalment to be paid forthwith
[or on the day of]:

And in default of payment it is ordered that [the said
sums be levied by distress and sale of the defendant's goods,
and in default of sufficient distress that] the defendant be
imprisoned in Her Majesty's prison at , and there
kept [*to hard labour*] for the space of , unless the
said sums [and all costs and charges of the [said distress
and] commitment and of his conveyance to the said pris-
on] be sooner paid.

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

Summary Jurisdiction Act, 1879.

10

ORDER FOR OTHER MATTERS.

In the

Before the Court of Summary Jurisdiction sitting at

The day of one thousand hundred
and

A. B., having made a complaint that *C. D.*, hereinafter
called the defendant on the day of at in
the aforesaid, did :

On hearing the said complaint, it is ordered that the de-
fendant do :

If imprisonment is ordered, add :—

And it is adjudged that if the defendant neglect or re-
fuse to obey this order, he be imprisoned in Her Majesty's
prison at for the space of [*or unless the said*
order be sooner obeyed].

[If costs are ordered, add :—

And it is ordered that the defendant pay to the said
the sum of for costs [*by instalments of for*
every days, the first instalment to be paid] forthwith
[*or on the day of*]:

And in default of payment it is ordered that the sum
due be levied by distress and sale of the defendant's goods,
and in default of sufficient distress that the defendant be
imprisoned in the said prison for the space of com-
mencing at the termination of the imprisonment before ad-
judged, unless the said sum [*and all costs and charges of*
the [said distress and] commitment, and of his conveyance
to the said prison] be sooner paid].

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

Summary Jurisdiction Act, 1879.

II

ORDER OF RECOGNIZANCE TO KEEP THE PEACE, ETC.

In the

Before the Court of Summary Jurisdiction sitting at

The day of one thousand hundred and

A. B., having made a complaint that *C. D.*, hereinafter called the defendant on the day of at , in the aforesaid, did]:

It is adjudged that the defendant do forthwith to the satisfaction of the complainant enter into a recognizance in the sum of with surety or sureties in the sum of [each] to keep the peace and be of good behaviour towards Her Majesty and all her liege people, and especially towards the complainant, for the term of now next ensuing:

And it is adjudged that if the defendant fail to comply with this order he be imprisoned in Her Majesty's prison at for the space of unless he sooner complies with this order.

[If costs are ordered, add :—

And it is ordered that the defendant pay to the said the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of]:

And in default of payment it is ordered that the sum due be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in the said prison for the space of commencing at the termination of the imprisonment before ordered, unless the said sum [and all costs and charges of the [said distress and] commitment], be sooner paid].

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

Summary Jurisdiction Act, 1879.

12

WARRANT OF DISTRESS FOR SUM DUE UNDER RECOGNIZANCE.

In the

To each and all of the constables of

A. B., was by his recognizance entered into the day of bound in the sum of :

And the condition of the said recognizance having been broken, it was on the day of adjudged by the Court of Summary Jurisdiction sitting at that the said recognizance be forfeited, and that he do pay the said sum of , and also do pay the further sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of]:

And default having been made in payment:

You are hereby commanded to forthwith make distress of the goods of the said (except the wearing apparel and bedding of him and his family, and, to the value of \$25, the tools and implements of his trade); and if within the space of [*five*] clear days next after the making of such distress, unless he consents in writing to an earlier sale, the sum stated at the foot of this warrant, together with the reasonable costs and charges of the making and keeping of the said distress, be not paid, then to sell the said goods, and pay the money arising therefrom to the clerk of that Court, and if no such distress can be found, to certify the same to the Court.

Summary Jurisdiction Act, 1879.

Dated the day of one thousand hundred
and .

Amount due under recognizance -

Paid - - - - -

Remaining due - - - - -

Costs of issuing this warrant - -

Total amount to be levied - -

\$	

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

13

RETURN OF INSUFFICIENT DISTRESS TO BE INDORSED
ON WARRANT.

I , constable of the , of , hereby
certify that, by virtue of the within-written warrant, I have
made diligent search for the goods of the within-named
A. B., and that I can find no sufficient goods of him
whereon the sums within-mentioned can be levied.

Dated the day of one thousand hundred
and .

X. Y.

Summary Jurisdiction Act, 1879.

14

ACCOUNT OF CHARGES INCURRED ON A WARRANT OF
DISTRESS.

In the matter of an information [*or a complaint*] by
against .

I, . of ., the constable charged with the exe-
cution of the warrant of distress upon the goods of .,
dated the . day of ., hereby declare that the
following is a true account of the costs and charges in-
curred in respect of the execution of the said warrant.

Dated the . day of ., one thousand . hundred
and .

\$

Total

A. B.

15

RECOGNIZANCE.

In the

We, the undersigned, severally acknowledge ourselves
to owe to our Sovereign Lady the Queen the several sums
following, namely, ., of ., as principal, the sum of
., and ., of ., and ., of ., as

Summary Jurisdiction Act, 1879.

suret , the sum of each, to be levied on our several goods, lands, and tenements if the said principal fail in the condition hereon indorsed.

(Signed where not taken orally) A. B.
L. M.
N. O.

Taken [orally] before me the day of one thousand hundred and

J. P. (L.S.)

or

Clerk of the Court of Summary Jurisdiction

or

Superintendent or Inspector of Police

or

Head Constable.

Condition.

The condition of the above recognizance is such that if the above-bounden principal shall appear before the Court of Summary Jurisdiction sitting at , on day, the day of , at the hour of in the noon, to answer to the charge made against him by , and to be dealt with according to law,

[or shall appear before the Court of Summary Jurisdiction sitting at for sentence when called upon],

[or shall keep the peace and be of good behavior towards Her Majesty and all her liege people, and especially towards , for the term of now next ensuing],

[or shall]

Then the said recognizance shall be void, but otherwise shall remain in full force.

END
In the
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with the
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Date
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Summary Jurisdiction Act, 1879.

16

ENDORSEMENT OF FORFEITURE OF RECOGNIZANCE.

In the

Before the Court of Summary Jurisdiction sitting at

The within-mentioned principal not having complied with the said condition, this Court adjudges the within-written recognizances to be forfeited.

Dated the day of , one thousand
hundred and

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

17

ENDORSEMENT MITIGATING FORFEITURE, &c.

In the

Before the Court of Summary Jurisdiction sitting at .

The within-mentioned recognizance having been adjudged to be forfeited, and A. B. having applied to this Court to cancel [*or mitigate*] such forfeiture, and having given security to the satisfaction of this Court for the future performance of the condition of the said recognizance, and having paid [*or given security for payment of*] the costs incurred in respect of the forfeiture thereof [*or insert such other condition as the Court may think just*]:

Therefore the said forfeiture is hereby cancelled [*or mitigated to the sum of*]

Dated the day of one thousand hundred
and

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

Summary Jurisdiction Act, 1879.

18

NOTICE OF RECOGNIZANCE TO BE GIVEN TO THE DEFENDANT AND HIS SURETIES.

Take notice that you, *A. B.*, are bound in the sum of _____ as principal, and you, *L. M. [and N. O.]*, in the sum of _____ as sureties, that you, the said principal appear before the Court of Summary Jurisdiction sitting at _____, on _____ day, the _____ day of _____, at the hour of _____ in the _____ noon, to answer the charge made against you by _____, and to be dealt with according to law [*or as the case may be*], and unless you, the said principal, appear accordingly the said sums will forthwith be levied on you severally.

Dated the _____ day of _____ one thousand _____ hundred and _____.

J. P.,

[*L.S.*]

or Stipendiary Magistrate for the District aforesaid.

19

SECURITY FOR PENALTY, &c.

In the

A. B. hereinafter called the defendant was this day [*or on the _____ day of _____*] by a certain conviction [*or order*] before the Court of Summary Jurisdiction sitting at _____, adjudged to pay the sum of _____ [by instalments of _____ for every _____ days, the first instalment to be paid] forthwith [*or on the _____ day of _____*] and to give security for the due payment thereof:

Summary Jurisdiction Act, 1879.

Now, therefore, the defendant, and his sureties, *C. D.*, of _____, and *E. F.*, of _____, hereby undertake that the defendant will pay the sum adjudged at the time and in the manner thereby directed, and hereby severally acknowledge themselves severally bound to forfeit and pay to [the Clerk of the Court] the sum of _____ in and the defendant fails to perform this undertaking.

(Signed where not taken orally) *A. B.*, Defendant.
C. D., } Sureties.
E. F., }

Taken [orally] before me the _____ day of _____ one thousand _____ hundred and _____

J. P.,

or Stipendiary Magistrate for the District aforesaid.

20

SECURITY TO PERFORM CONDITION OF FORFEITED
 RECOGNIZANCE.

In the

A. B. hereinafter called the defendant was, by his recognizance entered into the _____ day of _____, bound in the sum of _____ :

And the said recognizance has been adjudged to be forfeited, but the said defendant has applied to the Court of Summary Jurisdiction sitting at _____ to cancel [or mitigate] the forfeiture:

Now, therefore, the defendant and his sureties, *C. D.*,

Summary Jurisdiction Act, 1879.

of , and *E. F.*, of , hereby undertake that the condition of the said recognizance shall be duly performed [and that the said shall, on or before the day of , pay the sum of for costs incurred in respect of the said forfeiture]; and hereby severally acknowledge themselves severally bound to forfeit and pay to [the Clerk of the Court] the sum of in case the said defendant fails to perform the condition of the said recognizance.

(Signed where not taken orally) *A. B.*
C. D.
E. F.

Taken [orally] before me the day of , one thousand hundred and .
J. P.,
 or Stipendiary Magistrate for the District aforesaid.

21

NOTICE TO PRINCIPAL OF FORFEITURE OF SECURITY.

In the

To *A. B.*, of .

Take notice that you have forfeited the sum of , for which you were bound by your undertaking entered into the day of , and that unless you pay that sum to at on or before the day of , a warrant of distress will be issued for the recovery thereof.

Dated the day of , one thousand hundred and .

Clerk of the Court of Summary Jurisdiction
 for the District aforesaid.

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NOTICE

In th
 To
A. B.
 manded

Summary Jurisdiction Act, 1879.

ORDER VARYING ORDER FOR SURETIES.

In the

Before the Court of Summary Jurisdiction sitting at .
A. B. hereinafter called the defendant has been under a
 warrant of commitment dated the day of ,
 issued by this Court [*or* the Court of Summary Jurisdic-
 tion sitting at] committed to prison for default in
 finding suret in the sum of .

Upon further consideration it is now ordered that the
 amount in which the suret of the defendant are to
 be bound be reduced to [*or* that the obligation of
 the defendant find suret be dispensed with].

Dated the day of one thousand hundred
 and

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

NOTICE TO PARENT OR GUARDIAN OF CHILD CHARGED
WITH AN INDICTABLE OFFENCE.

In the

To of .

A. B. has been charged with , and has been re-
 manded until the sitting of the Court of Summary Juris

Summary Jurisdiction Act, 1879.

diction sitting at on the day of , at the
hour of , and it has been alleged you are his parent
[or guardian],

If you desire that he be tried by a jury, and object to
his case being dealt with summarily, you must attend be-
fore that Court on that day and hour.

Dated the day of one thousand hundred
and

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

24

FORMS APPLICABLE TO PROCEEDINGS FOR THE RECOV-
ERY OF A CIVIL DEBT.

COMPLAINT.

In the

Between *A. B.*

Plaintiff,

Address

Description

and

C. D.

Defendant,

Address

Description

The day of

The plaintiff complains that and claims the sum
of for [damages].

Made before me this day of

J. P.,

or Stipendiary Magistrate for the District aforesaid.

Summary Jurisdiction Act, 1879.

25

SUMMONS TO APPEAR.

In the

Between *A. B.*

Plaintiff,

Address

Description

and

C. D.

Defendant,

Address

Description

To the defendant herein.

You are hereby summoned to appear before the Court
 of Summary Jurisdiction sitting at on day the
 day of , at the hour of in the
 noon, to answer the plaintiff's claim, the particulars of
 which are hereto annexed.

Dated the day of .

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

Summary Jurisdiction Act, 1879.

26

SUMMONS TO WITNESS.

In the

Between *A. B.*

Plaintiff,

Address

Description

and

C. D.

Defendant,

Address

Description

To , of .

You are hereby required to attend before the Court of
Summary Jurisdiction sitting at on day the
day of , at the hour of in the
noon, to give evidence in the above cause on behalf of the
[plaintiff or defendant].

Dated the day of .

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

Summary Jurisdiction Act, 1879.

27

JUDGMENT.

In the

Before the Court of Summary Jurisdiction sitting at .
 The day of one thousand hundred
 and .

Between *A. B.*

Plaintiff,

Address

Description

and

C. D.

Defendant,

Address

Description

It is adjudged that the pay the [the sum
 of for debt [*or damages*] and] the sum of for
 costs [by instalments of for every days,
 the first instalment to be paid] forthwith [*or on the*
 day of]; and in default of payment that the sum
 due thereunder be levied by distress and sale of the
 goods [*or where security is accepted* and that the be
 at liberty to give to the satisfaction of this Court [*or of*
] security in the sum of with suret
 in the sum of [each] for payment of the
 sum adjudged].

J. P.,

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

Between *A. B.* Plaintiff,
Address
Description:

C. D. Defendant.

Description

To the above-named defendant [*or* plaintiff].

The plaintiff [or defendant] obtained a judgment against you, the above-named defendant [or plaintiff] before the Court of Summary Jurisdiction sitting at _____ on the _____ day of _____, for the payment of _____ dollars and _____ cents.

And you having made default in payment of the said sum, are hereby summoned to appear personally before the Court of Summary Jurisdiction sitting at _____ on _____ day the _____ day of [next], at the hour of _____ in the _____ noon, to be examined on oath by the Court touching the means you have or have had since the date of the judgment to satisfy the sum payable in pursuance of the said judgment, and also to show cause why you should not be committed to prison for such default.

(L.S.)

or Stipendiary Magistrate for the District aforesaid.

Summary Jurisdiction Act, 1879.

Amount of judgment and costs..... \$
 Costs of distress against the goods, if any _____

Deduct { Amounts paid.....
 Instalments which were
 not required to have
 been paid before the
 date of the summons _____

Sum payable.....
 Costs of this summons

Amount upon the payment of which no
 further proceedings will be had until de-
 fault in payment of next instalment ..

Summary Jurisdiction Act, 1879.

29

ORDER OF COMMITMENT.

In the

Between *A. B.*

Plaintiff,

Address

Description

and

C. D.

Defendant,

Address

Description

To each and all of the constables of _____, and to the
keeper of Her Majesty's prison at _____

The plaintiff [*or* defendant] obtained a judgment against
the defendant [*or* plaintiff] before the Court of Summary
Jurisdiction sitting at _____ on the _____ day of _____ for
the payment of _____

And the defendant [*or* plaintiff] has made default in
payment of the said sum, and the defendant [*or* plaintiff]
having been duly summoned to show cause why he shall
not be committed to prison for such default:

And it being now proved that the defendant [*or* plain-
tiff] now has or had since the date of the judgment the
means to pay the sum then due and payable in pursuance
of the judgment, and has refused [*(or)* neglected (*or*) now
refuses or neglects] to pay the same, and has shown no
cause why he should not be committed to prison:

It is ordered that the defendant [*or* plaintiff] be com-
mitted to prison for _____ days, unless he sooner pay the
said sum and costs stated below as that on the payment
of which he is to be discharged.

Summary Jurisdiction Act, 1879.

And you, the said constables, are hereby required to take the defendant [*or plaintiff*] and to deliver him to the keeper of Her Majesty's prison at _____, and you, the said keeper, to receive the defendant [*or plaintiff*], and there keep him for _____ days from the arrest under this order, or until he is sooner discharged by due course of law.

Dated the _____ day of _____ one thousand
hundred and _____

J. P.,

(U.S.)

or Stipendiary Magistrate for the District aforesaid.

\$
Total sum payable at the time of hearing
of the judgment summons.....
Cost of hearing of summons and of this
order.....

Total sum on payment of which the pri-
soner will be discharged.....

NOTES ON THE SUMMARY JURISDICTION ACTS.

These Acts contain almost every power and procedure required, but it is a doubtful point whether a Magistrate under either of these Acts, or in any enquiry on an indictable offence, can require a witness to produce documents, or can issue a *subpœna duces tecum*. When a witness refuses to attend and to produce the required papers, application must be made to the Supreme Court by the Attorney General or some one in his behalf for a Crown *subpœna duces tecum*, which is granted as a matter of right.

SEC. 10, PAGE 653, CONSOL. STAT. (DISTRESS OR IMPRISONMENT).

"In all cases where the statute by virtue of which a conviction for a penalty or compensation, or an order for the payment of money, is made by a Magistrate or Justice of the Peace, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith or within a certain time therein mentioned, or to be mentioned in such conviction or order, the defendant shall be imprisoned for a certain time, unless such penalty, compensation or sum shall be sooner paid, in any such case if the defendant do not pay the same together with costs, if awarded forthwith or at the time specified in such conviction or order for the payment of the same, the convicting Justice or Magistrate may, at *his option*, issue a warrant of distress and sale of the goods and chattels of the defendant, for the recovery of the amount of such penalty, compensation or sum of money, and costs. In case it shall be returned to such

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warrant of distress that no sufficient goods of the defendant can be found, the judgment or order for the imprisonment of the defendant shall be carried into effect."

The only object, apparently, of this section, is to set aside any doubts that might arise about the power of a Magistrate to order imprisonment without issuing a distress warrant where conviction orders a sum of money to be paid forthwith, or in a specified time. A Magistrate has the *option* of imprisoning or ordering a distress. In all such cases the Magistrate will exercise his discretion, and if there is a probability of obtaining the money by distress, or in instalments, &c., as provided by the preceding sections (p. 621), he will refrain from committing to prison,

SUMMARY JURISDICTION OF THE COURTS OF QUARTER SESSIONS.

This jurisdiction is at present confined only to the Courts for the Central District and for Harbor Grace. This valuable provision should be extended to Stipendiary Magistrates all over the Colony.

1. The Courts of General Quarter Sessions of the Peace for the Central District, and for the District of Harbor Grace, shall have full power, jurisdiction and authority to try and determine in a summary manner without a jury, all cases of larceny, of receiving stolen goods, and of obtaining or attempting to obtain any chattel, money or valuable security under false pretences where the value of the property stolen, or received, or obtained, or attempted to be obtained, does not exceed twenty dollars, and in such case to any amount where the party charged consents.

2. The said Court of Quarter Sessions may be held by a Police Magistrate, sitting alone, or with one or more Justices of the Peace, and may be holden whenever business may require, without formal adjournment or proclamation, except on the opening and closing of the Court at the commencement of each quarter.

3. The said Courts shall also have power to try and determine in a summary manner and without a jury, all cases of assault and battery, cutting and wounding, griev-

Summary Jurisdiction, &c., of Quarter Sessions.

ous bodily injury, with or without weapon, also, attempts to commit injury to the person, except attempts to commit murder or rape.

4. It shall be the duty of the said Courts of General Quarter Sessions before proceeding to the trial of any such case as mentioned in the next preceding section to forward to the Attorney General or in his absence to the Solicitor General, a copy of the complaint upon oath for his consideration and determination; and if the said Attorney General, or in his absence the Solicitor General, be of opinion that from any cause the charge is a fit subject for prosecution by indictment rather than to be disposed of summarily, the said Courts of Quarter Sessions shall deal with the case in all respects as if this chapter had not been passed.

5. In all cases mentioned in the foregoing sections the said Courts shall have the power to sentence all persons convicted of any of said offences, to a term of imprisonment not exceeding six calendar months.

6. In all cases mentioned in the third section of this chapter, the said Courts may in addition to or in lieu of any punishment by this chapter authorized, fine the offender to an amount not exceeding one hundred dollars, and require him to enter into his own recognizance and to find sureties for the keeping of the peace and being of good behaviour, or either: and in default of payment or finding such sureties to imprisonment for any period not exceeding six months.

7. When any person shall be convicted under the provisions of this chapter for any assault, whether with or

Summary Jurisdiction, &c., of Quarter Sessions.

without battery and wounding, or either of them, such person may, if the Court thinks fit, and on motion of the prosecutor or his counsel, in addition to any sentence which the Court may deem proper for the offence, be adjudged to pay the prosecutor his actual and necessary costs and expenses of the prosecution and such moderate allowance for the loss of time and injury as the Court shall, upon affidavit or other enquiry or examination, ascertain to be reasonable; and unless the sum so awarded shall be sooner paid, the offender shall be imprisoned for any term the Court shall award, not exceeding three months, in addition to the term of imprisonment, if any, to which the offender may be sentenced for the offence.

8. The Court may, by warrant under its seal, and signed by the Judge, order such sum as shall be so awarded to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and that the surplus, if any, arising from such sale, shall be paid to the owner, and in case such sum shall be so levied, the imprisonment awarded until payment of such sum shall thereupon cease.

9. The fine mentioned in the sixth section of this chapter may be apportioned by the said Court as it shall think fit, of which fine, part may be paid to the prosecutor and the remainder to the Receiver General for the use of the Colony. In no case under this chapter shall the offender be required to pay more than one hundred dollars, exclusive of costs, for any offence, nor suffer a longer term of imprisonment than six months.

10. Every conviction under this chapter shall have the

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Summary Jurisdiction, &c., of Quarter Sessions.

same effect as a conviction upon indictment for the same offence would have had.

11. No conviction, sentence or proceeding, under this chapter, shall be quashed for want of form, and no warrant of commitment shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted of some offence named therein, and there be a good and valid conviction to sustain the same.

12. If in any case of a criminal nature, tried before such Court, the Court finds the offence not proved, it shall dismiss the charge and make out and deliver to the person charged a certificate stating the cause of such dismissal, and in all such cases the Court may in its discretion order the prosecutor to pay costs to the defendant.

13. Every person who obtains a certificate of dismissal or is convicted under this chapter, shall be released from all further criminal proceedings for the same cause, and in all cases where any sum of money is adjudged to the person injured by virtue of the provisions of this chapter, the payment of such money by the offender shall be a bar to all civil proceedings against him for the same offence, but not otherwise.

14. Any person found committing any offence against this chapter may be immediately apprehended without a warrant by any person, and forthwith taken before some neighboring Justice to be dealt with according to law.

SUMMARY JURISDICTION IN

SLANDER.—Before this Act was passed, any one could take away a woman's character by slanderous words. The only remedy afforded by law for this terrible injury was an expensive proceeding in the Supreme Court. The proceedings must be commenced by summons. A verbal complaint will do, but it is always better to take it in writing, and have the complainant sworn.

1. Words spoken and published, after the passing of this Act, which impute adultery, unchastity or other like immorality to any person shall be actionable, and a plaintiff in any action for such words shall be entitled to damages without proof of special damage.

By the Act of 1898, Section 2 was amended as follows:

2. A suit for spoken words made actionable by this Act may be taken and heard before a Stipendiary Magistrate, who may award damages to any sum not exceeding fifty dollars with costs, and also may adjudge that in default of payment of such judgment, the defendant shall be imprisoned for a period not exceeding two months.

3. In any action taken in the Supreme Court for spoken words made actionable by this Act, a plaintiff, who shall not recover judgment for more than fifty dollars damages, shall not be entitled to any costs, unless the Judge hearing the case shall otherwise order.

4. All actions or suits taken under the provisions of

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Justices of the Peace, Summary Jurisdiction.

this Act, shall be begun within two calendar months next after the speaking of the words, and not afterwards.

FORM.

Follow the usual form in complaints; insert in the summons:—

"For that the said defendant on the day of
18 , at aforesaid, did speak and publish certain words imputing to the said complainant adultery, unchastity and immorality, contrary to the form of the Statute in such case made and provided."

GIRLS—CARNALLY KNOWING AND ABUSING—UNDER 16.

This law was passed to enable cases of this kind to be tried summarily; the former remedy was on indictment. This gives Magistrates full power to deal in an exemplary manner with all assaults of this description. To constitute the crime there must be an attack on the girl's virtue, and the assailant must be the real offender. Mere immoral intercourse between two young persons, in which both were equally guilty, will not, if considered, constitute an offence under the Act.

Whenever, upon complaint of a constable or other person, any person shall be convicted before a Stipendiary Magistrate or Justice of the Peace of unlawfully and carnally knowing and abusing, or of attempting to unlawfully and carnally know and abuse, any girl under the age of sixteen years, with or without her consent, such person shall be liable to imprisonment for a term not exceeding six calendar months with hard labor.

Justices of the Peace, Summary Jurisdiction.

FORM.

For that the said defendant on the day of
A.D. 18 , at aforesaid, did unlawfully and car-
nally know or abuse the complainant, a girl under the age
of sixteen years, *or did attempt to carnally know or abuse,*
&c., contrary to

DRUNKENNESS AND DISORDERLY CONDUCT.

This section of the Act of 1897 provides for the punish-
ment of persons who are drunk and disorderly in *private*
houses, as well as in public places—a very useful provision.

Whenever, upon the complaint of a constable or other
person, any person shall be convicted of disorderly con-
duct while drunk in any street, highway, or public build-
ing, or in any other place or house of public resort, or
whenever, upon the complaint of an inmate of any private
house, any person shall be convicted of disorderly conduct
when drunk in such private house, any such person so
convicted shall be liable to a fine not exceeding twenty-
five dollars, and, in default of payment, to imprisonment
according to the scale provided in the schedule to this
Act.

Justices of the Peace, Summary Jurisdiction.

FORM OF INFORMATION OR COMPLAINT (GENERAL).

District,

Newfoundland.

To wit.

The *information or complaint* of John Giles, of Snooks Cove, in the said District, fisherman, who, upon his oath, saith—(*Here give the words of the complaint or information in the first person*). The complainant signs or puts his mark, and the Magistrate writes in the left hand corner of the paper.

Sworn before me at afore-
said, this day of A.D.
18 . And in cases of markmen
he adds (having first been read
over and explained to the said

his
X
JOHN WILLS,
mark.

THOS. WILLS, J.P.,
or Stipendiary Magistrate.

LAND—Title to. See p. 533.

LARCENY—P. 533, and see in Appendix of Forms.

LOTTERIES—See chap. 75, Consol. Stat., N. S., p. 677.

LUMBER—Inspection of. See p. 821, Consol. Stat., N. S.

Malicious Injury to Property, Manslaughter, &c.

LUNATICS—See Act, 1897.

MALICIOUS INJURY TO PROPERTY.

For that you, Job Stiggins, on, &c., at, &c., maliciously did injure (*or damage or destroy*) a certain gate, the property of John Jones, contrary, &c.

Sum. pun. not ex. 2 mos. jail, or fine not ex. \$20; also compensation not ex. \$20.

MANSLAUGHTER.

For that he, the said A. B., on the first day of June, in the year of our Lord , feloniously did kill and slay one J. N. against the peace of our Lady the Queen, Her Crown and dignity.

F. Pun. not ex. 2 yrs imp. (I. A.) 24 & 25 Vic., c. 100, s. 5. **B.** never taken by Magistrate. Indict.

Manslaughter is the unlawful and feloniously killing of another, without any malice, either express or implied. It is of two kinds; (1), Involuntary manslaughter; where a man doing *an unlawful act*, not amounting to felony, by accident kills another, or where a man by *culpable neglect of a duty* imposed upon him is the cause of the death of another. And it may be stated generally that that which constitutes murder being done by design, and of malice prepense in the eye of the law, constitutes manslaughter, when arising from culpable negligence; (2), Voluntary manslaughter; where, upon a sudden quarrel, two persons fight, and one of them kills the other, or where a man greatly provokes another, by some personal violence, amounting at least to a blow, and the other immediately kills him. Where it is doubtful whether the crime is murder or manslaughter, the Magistrate should charge *murder* on the enquiry, as the Crown officers may afterwards indict for manslaughter only; or the grand jury, on an indictment for murder, may find on *manslaughter*.

Homicide not felonious.—No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner, without felony. 24 & 25 Vic., c. 100, s. 7.

Marine Court of Enquiry, Masters and Servants.

MARINE COURT OF ENQUIRY—See p. 880,
Consol. Stat.

MASTERS AND SERVANTS.

The law on this subject is contained in the 134th chapter of the Consolidated Statutes. The Magistrate cannot arrest unless there is a *written agreement* signed by both parties or their agents, and the Justice should have it produced before commencing proceedings.

FORM OF COMPLAINT (CAP. 20).

Northern District,
Island Cove,
to wit:

Newfoundland.

The complaint (a) of John Jones, of Island Cove, planter, taken upon oath, who saith,—“Job Stiggins, my servant, shipped by a written shipping paper, is now absent from my service without leave (*or refuses or neglects to perform his duty without sufficient cause*). I therefore pray a warrant for his apprehension.”

Sworn, &c.

JOHN JONES.

(a) On being brought before the Magistrate, Stiggins will be asked what he has to say in answer to the said complaint, and if he admits that the complaint is true, he should then be asked whether he will return to his master's service; if he will do so, and the master agrees to take him back, this ends the matter. In the cases the Magistrates should do all in his power to reconcile the parties, and never imprison the servant unless compelled to do so by his obstinacy in refusing to serve his master without lawful excuse.

Masters and Servants, Murder.

WARRANT.

Northern District,
Island Cove,
to wit:

Newfoundland.
To the Constables of the Northern
District.

Whereas complaint, on oath, has this day been made before me, the undersigned Justice of the Peace for the said District, by John Jones, that (*here state complaint*). These are therefore to command you forthwith to arrest Job Stiggins and bring him before me or some other Justice for the said District, to answer the said complaint, and to be further dealt with according to law.

Given under my hand, &c.

T. WILLS, J.P. **O**

In cases of this kind the Magistrate should do all in his power to reconcile the parties, and never imprison the servant unless it is a bad case, or the servant obstinately refuses to serve his master without lawful excuse. Always bear in mind the paramount necessity in this country of not interrupting the fishery.

MURDER.

For that he, the said A. B., on the first day of June, in the year of our Lord feloniously, wilfully, and of his malice aforethought, did kill and murder one J. N., against the peace of our Lady the Queen, Her Crown and dignity.

F. Punishment—death. (I. A.) 24 & 25 Vic., c. 100, s. 1. **Bail never taken by Magistrate.**

One J. N.—It must be proved that J. N. was the person killed; if the name of the person killed be unknown it should be stated.

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Murder.

Murder is thus described and defined by Lord Coke (3 Just. 47). "Where a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the King's peace, with malice aforethought, either express or implied."

1st. Murder must be committed by a person of sound memory and discretion; it cannot, therefore, be committed by an idiot, a lunatic or an infant, unless he shows a consciousness of doing wrong. (*Archb.*, 623.)

2nd. It must be an unlawfully killing not excusable or justifiable. It may be by poisoning, striking, starving, drowning, and a thousand other forms of death, by which human nature may be overcome. (4 *Blac. Comm.* 196.)

To make the killing murder, the death must follow within a year and a day after the stroke or other cause of it. (*Archb.*, 625.)

3rd. The person killed must be a reasonable creature in being and under the King's peace—a child must be born into the world in a living state, and there must be an independent circulation in the child before it can be accounted alive; but the fact of the child being still connected with the Mother by the umbilical cord, will not prevent the killing from being murder.

King's Peace—this means merely that it is not murder to kill an alien enemy in time of war.

4th. The killing must be committed with malice aforethought. Malice is either express or implied. *Express malice* is when one, with a sedate and deliberate mind, and formed design, doth kill another, which formed design is evidenced by external circumstances discovering that inward intention; as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. (1 *Hale*, 45.) No provocation, however great, will extenuate or justify a homicide where there is evidence of *express malice*. (*R. v. Mason*, *Fost.* 132.)

In many cases where no malice is expressed or openly indicated, the law will *imply* it. Thus, where a man wilfully poisons another—in such a deliberate act the law presumes malice, though no particular enmity can be proved. (1 *Hale*, 455.)

So if a man kill another suddenly, without any, or without a considerable provocation; if he kills an Officer of Justice in the legal execution of his duty; or if intending to do another felony, he undesignedly kill a man; in all these cases the law *implies malice*, and the offence is murder.

Of his malice aforethought did kill and murder.—The law presumes every homicide to be murder, until the contrary appears. Therefore, the prosecutor is not bound to prove malice or any facts or circumstances besides the homicide from which the jury may presume it; it is for the defendant to prove

Preservation of the Public Peace.

the homicide justifiable or excusable, or that it amounted but to manslaughter. In cases of express malice the homicide is usually committed in secret, and it is rarely practicable to substantiate it by direct and positive testimony; in most cases the defendant is convicted on circumstantial evidence merely.—Lord Hale laid it down as a rule never to convict a man of murder or manslaughter on circumstantial evidence alone, unless the *body have been found*. (2 Hale, 290.) (*R. v. Hopkins*, 8 C. & P. 591.) In cases of implied malice, the homicide is usually committed in the presence of others who may prove it, if not it must be proved by circumstantial evidence. (*Archb.*, 622.)

In all cases of murder, the Magistrate's first care should be to *secure* the guilty or suspected party; he should use the utmost care, caution and secrecy, in collecting the evidence. The body and the place of the murder should be carefully examined, and every minute particular noted; a Doctor should examine the body, and, if necessary, hold a *post mortem* to prove the actual cause of death. The bloody clothes of the murdered man, or of the murderer, should be carefully kept by the Constable, and also the instrument which caused death. All these things are necessary to produce at the trial. The Magistrate should remember that whilst every thing may appear clear to him who is on the spot, it is necessary to make the whole matter clear, perhaps months afterwards in St. John's, before a jury, who know nothing except what is proved before them. A murder can only be tried before the Supreme Court in St. John's.

PEACE, PRESERVATION OF THE PUBLIC PEACE.

1. One of the most important duties of a Justice of the Peace is to preserve the peace, and to that end he has various powers conferred upon him; one of the most ancient and most important of those powers is the authority to bind over parties to keep the peace. The general authority is contained in the Commission in the following words,—

“And to cause to come before you all those who, to any one or more of Our people, concerning their bodies,

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or the firing of their houses, have used threats, to find sufficient security for the peace, or their good behavior towards Us and Our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept."

Binding over parties to keep the peace is a very useful remedy, and will be found suitable to a great variety of cases; it tends to prevent fights and breaches of the peace, and in matrimonial differences, where threats are used, it is almost the only remedy a Justice of the Peace can apply; it may not always secure peace between the contending parties, but it will at least tend to prevent them coming to blows.

2. If a party has sustained violence from another, and has reason to believe that it will be repeated, or if without actual violence having been committed, he has been threatened with it, either by words or gestures, and therefore goes in bodily fear, he may compel the offender to enter into a recognizance, with or without sureties, to keep the peace towards him. (*Surety for good behavior is now not used, because the sureties for the peace include sureties for good behavior.*)

3. To warrant an application against another for sureties to keep the peace, the applicant must make it appear from reasonable evidence that the party against whom he applies intends personal violence against him. But actual violence, or even threats, will not be essentially requisite to furnish the evidence; it may consist in the looks, gestures, or conduct of the party; but in such case it is necessary for the complainant to depose to his belief that

Preservation of the Public Peace.

such conduct, in fact, amounts to a threat of personal violence, and that *he is afraid the defendant will do him some bodily injury*. The complaint should be made soon after the cause of fear has arisen (a).

4. One Justice, upon complaint on oath being made before him, that from threats, &c., used within his jurisdiction towards complainant, or from threats used against complainant's wife or child, or from threats used by a wife against husband, or husband against wife, the complainant fears another person will do him, his wife, or child, some personal injury, may issue his summons or warrant against the party complained of.

5. FORM OF COMPLAINT.—

District,
to wit.

Newfoundland.

The complaint, on oath, of A. B., of _____, in the said District [Fisherman] before me, the undersigned Justice of the Peace for the said District, who saith on the day of _____ last, C. D., of _____, [Fisherman] (*here state the threats or other acts of violence of which the complainant complains, in his very words, according to the facts, as they took place*) and that from the above and other threats used towards me by the said C. D., I am afraid that the said C. D. will do me some bodily injury.

(a) The right to apply for sureties to keep the peace, exists only where personal violence is apprehended. No injury to man's property (except setting fire to his house), or threatening do so, gives the Magistrate authority to bind over.

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Preservation of the Public Peace.

I therefore pray that the said C. D. may be required to find sureties to keep the peace and be of good behavior towards me.

(Sd.) A. B.

Sworn before me, this day of ,
 A. D. 18 , at aforesaid. }

T. WILLS, J.P.

6. If the Justice is satisfied that the complaint is *bona fide*, and there is any reasonable ground for apprehension of personal violence, he will issue the summons or warrant for the appearance of the defendant.

7. FORM OF SUMMONS.—(a)

District, Newfoundland.
 , to wit.

To C. D.

You are hereby required to appear in your proper person before the undersigned Justice of the Peace for the said District, at aforesaid, on the day of by of the clock in the forenoon of the same day, to answer the complaint of A. B. [*here state shortly the complaint*], and to find sureties to keep the peace and be of good behavior towards Her Majesty and all Her liege people, and especially towards said A. B., and to do further dealt with according to Law.

Given under my Hand and Seal, this day of
 A. D. 18 , at aforesaid.
 T. WILLS, J.P. (L.S.)

(a) Service should be personal.

District, Newfoundland.
 , to wit.

Whereas complaint on oath has this day been made before me, one of the Justices of the Peace for the said District, by A. B. et al., Fisherman, that [*here state the whole complaint in third person*]: These are therefore to command you forthwith to arrest the said C. D., and bring him before me or some other Justice for the said District to answer the said complaint and to be further dealt with according to Law.

T. WILLS, J.P. (L.S.)

10. The recognizance can only be to keep the peace and be of good behavior for *Twelve months*. The defendant cannot be convicted of an assault as well (if one was committed at the time) against the complainant's protest, but if a complaint for an assault is dismissed, and the

(a) A verbal complaint will do even when party is before the Justice on another charge. It is only when warrant is to issue that information need be in writing and on oath,

Whereas
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Preservation of the Public Peace.

Justice thinks, from the evidence, that such a precaution is necessary, he may require the defendant to keep the peace. If sureties are required, and the defendant is not prepared with them, the case should be adjourned, to enable him to get them.

11. The amount of the recognizance should be proportioned to the condition in life of the parties, and the circumstances of the case. In default of entering into recognizance, with surety or sureties, the defendant is committed to jail; it must not be for more than six months, and in practice will hardly ever exceed three months. The recognizance may be in the following form:

12. FORM OF RECOGNIZANCE.—Follow the ordinary form and then write on the back of Recognizance,—

"The condition of this recognizance is such, that if the above bounden C. D. shall keep the peace and be of good behavior towards the Queen and all her liege people, and especially towards _____, of _____, aforesaid, Fisherman, [the complainant] for the term of twelve months now next ensuing, then the said recognizance shall be void, or else to remain in its full force."

13. FORM OF COMMITMENT FOR WANT OF SURETIES TO KEEP THE PEACE.—

District,
to wit.

Newfoundland.

To the Constables of the sa. District,
and Keeper of the Gaol at _____

Whereas A. B., &c. [here recite the complaint as in the warrant] and whereas he said C. D. was this day brought

Preservation of the Public Peace.

before me, Thomas Wills, a Justice of the Peace for the said District, at _____, to answer the said complaint; and I the said Justice have ordered and adjudged that the said C. D. shall enter into his own recognizance in the sum of _____ dollars, with two sureties in the sum of _____ dollars each, to keep the peace and be of good behavior towards Her Majesty and all her liege people, and particularly towards the said A. B., for the term of _____ months now next ensuing, and inasmuch as the said C. D. hath refused or is unable to enter into the said recognizance with such sureties, I hereby command you the said Constables or one of you forthwith to convey the said C. D. to the said Gaol and to deliver him to the Keeper thereof with this warrant; and I command you the said Keeper to receive the said C. D. into your custody in the said Gaol, and there safely keep him for the space of _____ months, unless in the meantime he enter into the said recognizance with such sureties.

Given under my Hand and Seal, at _____, aforesaid,
this _____ day of _____, A. D. 18 _____.

T. WILLS, J.P.

14. RIOT DEFINED.—A riot is a tumultuous disturbance of the peace by three or more persons assembling together with an intent to assist each other in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people, whether the act intended were of itself lawful or unlawful. If, after so assembling, they do not proceed to execute their purpose, it is an unlawful assembly only—if they proceed to execute the

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Preservation of the Public Peace.

act, but do not execute it, it is called a rout. The distinction between a riot, rout, and unlawful assembly, has thus been stated:—A riot is a tumultuous meeting of persons who are guilty of actual violence; a rout where they endeavor to commit an act which would make them riotous; and an unlawful assembly where they meet with an intention to make a riot, but neither carry their purpose into effect nor make any endeavors towards it.

15. PERSONS NOT DISPERSING AFTER PROCLAMATION.

—If any persons to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, and being required by any justice, sheriff, mayor, bailiff, &c., by proclamation in the King's name (in the exact form (a) mentioned in the 2nd section, except the substitution of the "Queen" for the "King"), to disperse themselves, and peaceably depart, shall, to the number of twelve or more, unlawfully, riotously, and tumultuously remain or continue together, for one hour after such proclamation—*Felony*—[1 Geo. 1, stat. 2, c. 5, s. 1]. Opposing or obstructing by force any person making such proclamation;

(a) The Justice of the Peace or other person authorized by this Act to make the said proclamation, shall among the said rioters or as near to them as he can safely come, with a loud voice command or cause to be commanded, silence to be whilst proclamation is making, and after that shall openly and with loud voice make, or cause to be made, proclamation in these words, or like in effect:—*Our Sovereign Lady the Queen chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business upon the pains contained in the Act made in the first year of King George, for preventing tumults and riotous assemblies. GOD SAVE THE QUEEN.* [1 Geo. 1 St. 2, c. 5, sec. 2.

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and persons so being riotously assembled, to the number of twelve or more, to whom proclamation should have been made, if the same had not been hindered, and not dispersing within one hour having knowledge of such hindrance—*Felony* [1 Geo 1, stat. 2, c. 5, s. 5].

16.—APPREHENSION OF OFFENDERS.—Persons so assembled, and not dispersing within one hour after proclamation, may be seized by any justice, sheriff, mayor, peace officer, or other person commanded by them respectively to assist, and forthwith carried before a justice. [1 Geo. 1, stat. 2, c. 5, s. 3.]

17. RIOT OR AFFRAY GENERALLY.—Persons guilty of a riot, affray, or other disturbance of the public peace, may be apprehended at the time without a warrant, and conveyed before a justice, who may bind them over to keep the peace, or commit them for trial for a misdemeanor.

18. MILITARY FORCE.—If it should be found that the civil power is insufficient, the military may be called upon by the Magistrates to act. It is scarcely necessary to observe, that their active services should not be required unless it is evident that the constabulary force is inadequate to maintain the peace. It may, however, be expedient to request the military to hold themselves in readiness, as the knowledge of such a step having been taken by the Magistrates, will frequently prevent an outbreak, by convincing the parties of the power and determination of the Magistrates to suppress any disturbance which may

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arise. The officer in command requires a written application to be made for the aid of the military, in order that he may be enabled to produce it at any future time as his protection against personal responsibility.

PERJURY.

For that he, the said A.B., on the day of , at , in the said District, falsely, wickedly, wilfully and corruptly, did commit wilful and corrupt perjury (*in the testimony he gave upon oath in his examination, before , Esquire, a Justice of the Peace for the said District, upon the hearing of a certain information or complaint, preferred by one C. D., or the said A. B., against E. F.*), against the peace, &c.

M. I. Common Law. **B.** discretionary. Pun.—fine and imp. with hard labor, or imp. not ex. 7 yrs., and incompetency as a witness.

The oath must be taken—(1) In a judicial proceeding; (2) Before a competent jurisdiction or authority; (3) It must be material to the question depending; (4) It must be false or not known by defendant to be true; and (5) it must be taken deliberately and intentionally.

PRACTICE IN CRIMINAL AND CIVIL PROCEEDINGS.

1. It is most important for the Justice to bear in mind that it is one of the necessary ingredients in all criminal proceedings that the defendant should have committed the offence with a *criminal knowledge and intent*; the intent, however, sometimes cannot be positively proved, it can only be implied from overt acts; and every man is supposed to intend the necessary and reasonable consequences of his own acts. There are some cases in which the intent is inferred as a necessary conclusion from the act done, as where a man knowingly utters a forged instrument as a genuine one, the intent to defraud the party to whom he utters it is a necessary inference. For instance, if, under color of arrears of rent, though none be actually due, I distrain or seize my tenant's cattle, this is trespass (a *civil* injury), not felony (a *criminal* offence). Where a shareman, dismissed by his master, went to his master's store, broke it open, and took five quintals of fish, which he believed was his share of the fish, this would not be larceny (a *criminal* offence), but a *civil* injury trespass. The claim of right, as in the case of this servant, may be wholly unfounded, but if it is proved that the defendant, *bona fide*, believed that he had such a right, it would do away with the criminality of his proceeding; it will thus be seen that a guilty knowledge or intention is a necessary ingredient in all criminal proceedings, with the exception of some few cases which are made triable summarily under certain statutes, such as servants and apprentices absenting themselves from their master's service, and

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which in reality partake more of a civil than a criminal character, the words *maliciously, wilfully, &c.*, having been omitted from the statute creating the offence. This guilty knowledge and intent marks one of the great distinctions which separates criminal from civil proceedings. Every unneighborly and wrong act is not necessarily criminal; for instance, in the case mentioned in pages 533 and 534, if Snow had cut down the fence in the night, he could not be summoned for malicious injury, his *bona fide* belief in his right to do it making his act a civil injury, for which damages might be recovered against him, not a criminal offence. This subject is also referred to under the head of larceny, in the Appendix of Forms, at the end of the Book.

2. OUSTER OF JURISDICTION BY CLAIM OF RIGHT.—

As this subject has been already treated of in page 533, it only remains to say that where the matter is a doubtful one, it is enough to stay the jurisdiction. Justices cannot give themselves jurisdiction by an erroneous and capricious decision. "The jurisdiction is not ousted by the *bona fide* claim of a right *which cannot exist at law*." A claim of right is not waived by the defendants calling evidence on the merits.

3. Estoppel or "*Res Judicata*" (a)—Latin—means where the matter has been adjudicated on. If an information or complaint be dismissed, the Justice may, if required, make an order of dismissal, and give the defendant

(a) The plea of *res judicata* applies only where the identical question once decided is again raised between the same parties.

Practice in Criminal and Civil Proceedings.

a certificate thereof, the production of which will be a bar to any subsequent information or complaint for the same matter against the same party. If, however, the information or complaint is dismissed for want of form, or from a mistaken view of jurisdiction, and without any adjudication on the merits, a second information or complaint may be laid, and the plea of *autrefois acquit* will not avail. If the same question has been raised and disposed of, although in another form, by a different Court, the Justices cannot re-open it. When two Courts have concurrent jurisdiction, the decision of one Court will *prima facie* be *res judicata* in the other.

4. MAJORITY DECIDE.—The judgment will be according to the opinion of the majority of the Justices present at the hearing. If the Justices are equally divided, there can be no adjudication, and the case may be again heard on a fresh information, or adjourned by the majority to the next sitting, when the case can be re-heard with the assistance of other Justices. The Justices may alter their judgment during the continuance of the same sitting. Two or more Justices may lawfully do whatever any one Justice may do alone.

5. REFUSAL TO ADJUDICATE.—If the Justices, from a mistaken opinion as to their jurisdiction, refuse to adjudicate, a rule may be obtained under 11 and 12 Vict., c. 44. s. 5, requiring them to show cause why they should not hear and adjudicate. If, however, they have already adjudicated on the merits, although their decision may be erroneous, their judgment cannot be reviewed, except on a case stated.

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6. JUDGMENT DEFERRED.—The Justices are not obliged to fix the fine or punishment at the instant of conviction, but may take time either for the purpose of informing themselves as to the legal penalty, or the amount proper to be imposed, or of taking advice as to the law applicable to the case.

7. WAIVER OF IRREGULARITY.—If the defendant appear at the hearing, he must then object to the form of the summons, or to any irregularity in the proceedings on which it was founded; if he do not, but asks for judgment in his favor on the merits, he waives any irregularity in the process for bringing him before the Court. The defendant's appearance cures any irregularity in the service of the summons, or the want of one.

8. COMMITMENT.—The offence for which the defendant is committed should be stated in a warrant of commitment with the same clearness and precision as in a conviction. It should show that the defendant has been convicted of an offence over which the Justice has jurisdiction. It was at one time a matter of doubt whether a Justice could substitute a good warrant for a defective one, and thereby justify the gaoler in detaining the defendant in prison; but this doubt has been removed. In this case the first commitment of the defendant under the Vagrant Act was bad on the face of it, but the Court held, after argument, that the prisoner might be lawfully detained under a second warrant for the same offence, bearing date the same day as the first warrant, and lodged with the gaoler several days after, having an endorsement requiring the gaoler to substitute the same for the first warrant.

Practice in Criminal and Civil Proceedings.

9. **PRINTED FORMS.**—Every Justice of the Peace should take care to provide himself with printed forms which can be obtained on application to the Colonial Secretary or to the Clerk of the Peace in St. John's.

10. **SEAL.**—The seal which is required to all warrants, commitments, convictions, summons and other documents, purporting to be under the hand and seal of the Justice, may be any impression or a mark in ink made by the Justice or the Printer and adopted by the Justice; the impression on a wafer made with a key or even with the thumb will do. And until this absurd law is done away with, Justices should be careful to have a seal or something like it whenever necessary on their papers.

11. **RECORDS.**—A Record Book containing full particulars and notes of the evidence in all cases brought before him should be kept by every Justice. He should also keep a copy of every summons or warrant; and every conviction should be entered and recorded in his book. I would also recommend him to have all complaints and informations written in a book for convenience of reference and also to preserve them. The Judge of the Supreme Court on Circuit may request the Magistrate to shew his Records; the Justice will, therefore, for his own credit sake take care to have his Records kept in an orderly and correct manner.

12. **GENERAL OBSERVATIONS.**—In the detection and punishment of crime, a Magistrate should be active and energetic, leaving no stone unturned to discover the guilty party. None of the information which he receives, nor the evidence he takes before the party is charged on the

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Practice in Criminal and Civil Proceedings.

formal enquiry, need be known to any one but himself and the constable he employs, and in nearly all serious offences, it is most important that this information should not be communicated to the suspected or guilty person. The Magistrate, also, should endeavor to discover the motive for the crime; no offence is committed without a motive, and when once the motive is discovered it affords very often a clue to all other circumstances connected with the case. Whilst, however, he should thus be active and energetic in obtaining information, he should be calm and deliberate in arriving at a conclusion, weighing well all the evidence on both sides of the question, not deciding on first impressions, which very often are the right impressions, but sometimes also are completely erroneous; he should think over every matter well before he decides, and when he does decide, should take care to have sufficient evidence to sustain his judgment. No prejudice or personal dislike should be allowed to affect his judgment.

13. The evidence in civil cases follows precisely the same rules as given on Evidence, the great difference being that in civil cases, the mere preponderance of evidence in favor of one party will entitle that party to a judgment in his favor, both plaintiff and defendant can be called and be compelled to give evidence for or against each other.

14. A civil case before a Magistrate or Quarter Sessions is always commenced by a summons. This should be served personally on the defendant by the constable, who should have the original, or both copy and original may be signed by the Magistrate. On the original, which is

Practice in Criminal and Civil Proceedings.

returned by the constable to the Magistrate, he, the constable, should endorse on the back,—“I served the defendant personally with a copy of this summons on —, (at such an hour”).

15. The summons should contain particulars of the plaintiff's demand, either on a piece of paper attached to the summons or written on the margin of the summons.

16. At the exact time when the summons is made returnable, the Magistrate sitting in the Court House should direct the constable to call the case, — versus —; and, if neither party should appear at the appointed time, he may, if he do not choose to wait for the parties, mark on the back of the summons, “case dismissed.”

17. Should the plaintiff appear, but not the defendant, the Magistrate should direct the constable to call out in a loud voice the name of the defendant or defendants three times,—“appear at the suit of —, (plaintiff), or judgment will be given against you by default.” The Magistrate should then proceed to swear the plaintiff according to the form of the oath given in next section, and enquire carefully into his claim if he believe that he has a claim against the defendant, and he is bound to accept his evidence when not contradicted; he will, however, use his own discretion under the evidence as to the amount for which he will give the plaintiff judgment. After examining the plaintiff, and, if necessary, any witness he produces, the Magistrate should also swear the constable, and if the proof of service is satisfactory, he endorses on the

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Practice in Criminal and Civil Proceedings.

back of the summons, "Judgment by default for plaintiff for \$—." (Date.) (a)

18. The oath should be in the following form, and may be administered by the Magistrate or Clerk of the Peace:—

"The evidence you shall give in the cause now depending, shall be the truth, the whole truth, and nothing but the truth. So help you GOD."

The observations on oaths in Evidence also refer to swearing in civil cases.

19. When both parties appear, the Magistrate, at the time when the defendant is summoned for, will at once proceed to hear the case. The plaintiff may commence proceedings by making a statement of his claim, or he may at once call his witnesses; the plaintiff examines each of his own witnesses first, this is called examination in chief, and then the defendant may cross-examine them. The Magistrate should bear in mind the rules of evidence and keep each party strictly to the case before him, and should endeavor as much as possible to prevent either party interrupting the other. When the plaintiff's case is finished, the defendant then proceeds with his case; he may commence with making a statement of his grounds of

(a) *Default.*—Should the defendant appear soon after judgment by default has been delivered, and prove on oath to the Magistrate that he has good ground of defence to the action, the Justice may request the plaintiff and defendant to attend before him, hear both parties, and decide the case on the merits.

Practice in Criminal and Civil Proceedings.

defence, (a) or he may at once proceed to call his witnesses; these are examined by the defendant in chief and cross-examined by plaintiff. If the defendant calls witnesses, the plaintiff has a general reply. After hearing both sides, the Magistrate may immediately give judgment, or he may take time to consider it, making always as little delay as possible in delivering his judgment.

20. Should the plaintiff at any time before judgment is delivered, choose to be non-suited, he can claim a non-suit as a matter of right. The effect of non-suit is, *first*, the plaintiff may summon the defendant again for precisely the same cause of action, which he could not do if judgment had been given for the defendant; *second*, he has to pay the defendant's costs.

21. The costs to be paid for witnesses, (b) summons,

(a) *Set-off*.—This means the counter claim which the defendant may have against the plaintiff. To enable the defendant to set off his claim against plaintiff, 1st, it must be between the same parties, not a sum due by plaintiff and *another* to defendant; 2nd, the set-off must be liquidated, that is a sum certain, which can be sued for as a common money debt, not in the nature of damages, such as for killing a pig, or damage to property, which are known in law as unliquidated damages—damages which would have to be ascertained by a Court.

(b) A witness is not bound to attend in a civil case unless his fee for attendance, 75 cents a day and 10 cents a mile travelling to the place of trial and back to his residence, is first paid or tendered to him.

Tender.—In making a tender it must be made to the party himself or some one authorized by him to receive it; the money must be produced unless the creditor dispenses with the production of it at the time, or does anything which is equivalent to a dispensation, such as saying "You need not offer me the forty shillings, I won't take it." By law no tender in silver is good over \$10. [Consol. Stat., p. 462.] Gold may be to any amount. Tender must be unconditional.

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&c., are given at pages ; the plaintiff should always be made to pay the costs before the process is issued for him, unless he is a pauper, and can swear that he is not worth five pounds over and above his wearing apparel, &c.

QUARTER SESSIONS.

1. Courts of General Quarter Sessions of the Peace are defined to be that species of General Sessions which is held under authority of the Commission of the Peace (*a*) by *two* or more Justices at same place within the District, fixed by their precept, once in every quarter of a year, as directed by Statute. The Court is a very ancient Court, and was defined by LORD TENTERDEN to be "a Court of oyer and terminer, and a Court of Record, and not a Court of Inferior Jurisdiction."

COMMISSION OF THE PEACE.—In the Central District, following the English practice, there is a General Commission of the Peace for the District in which the Court is held.

2. The Courts of General and Quarter Sessions were established in this Colony by the Imperial Act, 5 Geo. IV., Cap. 67, Sec. 22, known as the Judicature Act, it was

(*a*) Manual, p. 2.

Quarter Sessions.

therein provided that these Courts shall be holden at Newfoundland and its Dependencies, at such times and places as the Governor shall, by his Proclamation, appoint;—this provision was continued and re-enacted by the Consolidated Statutes with a slight variation, and this is now the Law.

3. Courts of General and Quarter Sessions shall be holden in this Island and its Dependencies at such places with jurisdiction over such extent of District as hath been heretofore appointed, or as may be hereafter appointed, by the Proclamation of the Governor. Consol. Stat.

4. The next Section of the Consolidated Statutes provides for the times when the Court shall be holden.

"The Courts of General and Quarter Sessions shall be holden on the first Monday of January, April, July and October, and shall sit, by adjournment, from time to time, until the business pending therein respectively shall be disposed of, and there shall be no necessity for any Proclamation thereof."

5. The places where the Proclamation ordered such Courts should be held, are St. John's, Harbor Grace, Carbonear, Brigus, Trinity, Bonavista, Greenspond, Twillingate, Ferryland, Trepassey, St. Mary's, Placentia, Burin, Grand Bank and Harbor Briton.

6. The Courts of Quarter Sessions are now held only in St. John's, Harbor Grace, Carbonear and Brigus, and have fallen into disuse in all the latter places. The machinery of the Quarter Sessions is used in the other Colonies for

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many useful public purposes, but in order to make this Tribunal of any practical benefit in this Island, it will be necessary in the first place to define the territorial jurisdiction of each Court.

7. Appeals in Bastardy cases, see : 86, in License cases, and all Criminal matters where the English Law gives an appeal to Quarter Sessions, the appeal must now come before the Supreme Court.

8. PUBLIC WHARVES.—They may also make regulations for Public Wharves (Consolidated Statutes)—“The Justices in Session, in the several districts of this Colony, may make and establish rules and regulations for the control and management of Public Wharves within their several jurisdictions, and fix and establish fees and rates of wharfage and penalties for violation of same; and such rules and regulations, fees, rates and penalties, after being approved of by the Governor and Council, shall have the force and effect of law.”

“Such rules and regulations shall be kept posted up in some conspicuous place adjacent to the wharf for which the same shall be prescribed.”

9. RULES FOR SKATING AND SLIDING.—The Quarter Sessions can also make rules for preventing persons from Skating, Sliding, &c., down hills, or highways, or streets. Consol. Stat.

10. NUISANCES.—The Sessions may also make orders for the prevention of Nuisances dangerous to personal safety, or affecting the public health. Consolidated Statutes. See Quarter Sessions in General Index.

*Receivers of Stolen Goods—Receivers.***RECEIVERS OF STOLEN GOODS.**

For that he, the said A. B., on the day of ,
at , in the said District, feloniously did receive of
one C. D., (*the thief*), or, *if unknown*, say of a certain
evil disposed person, one watch of the value of forty dol-
lars (*or money, as the case may be*), the goods and chattels
(*or money and property*) of E. F., which had then lately
before been feloniously stolen, he the said A. B. well
knowing the same to have been so stolen, contrary to the
statute, &c. See also General Index.

RECEIVERS.

IN FELONIES.—Whosoever shall receive any chattel,
money, valuable security, or other property whatsoever,
the stealing, taking, extorting, obtaining, embezzling, or
otherwise disposing whereof shall amount to a felony,
either at common law or by virtue of this Act, knowing
the same to have been feloniously stolen, taken, extorted,
obtained, embezzled, or disposed of, shall be guilty of
Felony.

Pun.—imp. n. ex. 2 yrs. Male under 16, whipping

ACCESSORIES.—An offender may be indicted and convicted either as an
accessory after the fact or for a substantive felony, and in the latter case,
whether the principal felon shall or shall not have been previously convicted,
or shall or shall not be amenable to justice; but no person howsoever tried
for receiving as aforesaid, shall be liable to be prosecuted a second time for
the same offence.

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*Vagrants—Wrecks.***VAGRANTS.**

39 Vic., Cap. 12, Sec. 15:—

FORM.

"All common beggars and vagrants, having no visible means of subsistence, may be arrested by the police, and brought before a Justice of the Peace, and, on conviction before the said Justice, may be imprisoned for a period not exceeding ten days."

WRECKS.

See page 903 Consolidated Statutes (N. S.)

FORM.

WRECKS.—In cases of charges against parties for stealing from wrecks. The form can be easily framed; there is no need to give particulars of property stolen; it is quite sufficient to charge the party that he, the said accused, did steal or maliciously destroy certain wreck, or did receive wreck, knowing the same to be wreck, &c., or did keep in his possession, wreck, knowing it to be the wreck, without a lawful title, &c., as in the words of the Act.

Appendix of Forms of Offences, &c.

APPENDIX OF FORMS OF OFFENCES, &c.

ABBREVIATIONS IN FORMS.

On, &c., is an abbreviation for, on the — day of —, Anno Domini one thousand eight hundred and ninety —; *at, &c.*, is an abbreviation for statement of locality, as, *at Island Cove, in the Northern District*; *I.*, means indict. offence, *n. ex.*, not exceeding — years; *imp.*, imprisonment; *sum.*, means summary jurisdiction; *B.*, means bail; *Dis.*, means discretionary; *Comp.*, means compulsory; *F.*, felony; *M.*, misdemeanor; *I. A.*, Imperial Act. All offences not marked *Summ.*, are indictable offences. Offences marked *Summ.*, are cognizable under summary jurisdiction.

ARSON.

1. (*Dwelling House, person being therein.*)—For that he, the said A. B., on, &c., at, &c., unlawfully, maliciously, and feloniously, did set fire to a certain dwelling house of C. D., there situate, one E. D. then being therein, contrary to the statute.

Punishment—Imp. n. ex. 2 yrs. **B.** dis. **F.** (I. A.) 24 and 25 Vic., c. 97, sec. 2.

2. *House, Stables, &c.*—For that he, the said A. B., on, &c., at, &c., unlawfully, maliciously, and feloniously, did set fire to a certain house (or stable or outhouse there situate, in the possession of the said A. B. or C. D.), with intent thereby then to injure the said C. D. (or to defraud the — Insurance Company), contrary to the statute, &c.

Punishment—Imp. n. ex. 2 years. **B.** dis. **F.** (I. A.) 24 & 25 Vic., c. 97, s. 3.

ASSAULT.

All assaults, except to commit murder or rape, are triable at Quarter Sessions, St. John's and Harbor Grace only.

3. *Stabbing, &c., with intent to maim, resist apprehension, disable, &c.*—For that he, the said A. B., on, &c., at, &c., unlawfully, maliciously, and feloniously, with a certain gun, then and there loaded with gunpowder and divers leaden shot, did shoot at one C. D., (or did, by drawing the trigger of a certain loaded gun, attempt to discharge the said gun at —, with intent, in so doing, then and there to maim (a) or disfigure (b) or disable (c) him), or to do some grievous bodily harm, or to resist and prevent the lawful apprehension of the said A. B., or of one E. F., contrary, &c.

Punishment—Imp. n. ex. 2 years. **B.** discretionary.
F. (I. A.) 24 & 25 Vic., c. 100, s. 18 & 19.

4. *Causing bodily harm.*—For that he, the said A. B., on, &c., at, &c., unlawfully, maliciously, and feloniously, did wound (or cause certain grievous bodily harm) to one

(a) *Maim*, is to injure any part of a man's body which may render him, in fighting, less able to defend himself, and annoy his enemy.

(b) *Disfigure*, is to do some external injury, which may detract from his personal appearance.

(c) *Disable*, is to do something which creates a permanent disability, and not merely a temporary injury.

Appendix of Forms of Offences, &c.

C. D., with intent, &c., (*as in Form 3, varied according to the circumstances of the case*), contrary, &c.

Punishment—Imp. as No. 3. **B.** discretionary. **F.** (I. A.) 24 & 25 Vic., c. 100, s. 18.

5. *Misdemeanor in Stabbing, &c., or inflicting grievous bodily injury.*—For that he, the said A. B., on, &c., at, &c., unlawfully and maliciously did wound one C. D., (or unlawfully and maliciously did inflict upon one C. D. certain grievous bodily harm, with a certain weapon or instrument called —), contrary to the statute.

M. B. dis. Imp. n. ex. 2 yrs. (I. A.) 24 & 25 Vic., c. 100, s. 18.

6. *On Magistrates or Officers, &c., in case of Wreck.*—For that he, the said A. B., on, &c., at, &c., unlawfully did assault, and did strike or wound C. D., Esquire, a Magistrate (or Commissioner of Wrecked Property), then lawfully authorized in and on account of his the said C. D.'s duty in and concerning the preservation of a certain vessel (*there in distress*), (*or wrecked*), (*or stranded*, or *cast ashore*), (*or lying under water*), or certain goods and effects, wrecked, &c., contrary to the statute.

Punishment—Imp. n. ex. 2 yrs. **M. B.** discretionary, (I. A.) 24 & 25 Vic., c. 100, s. 37.

7. *On Peace or Revenue Officer.*—For that he, the said A. B., on, &c., at, &c., unlawfully did assault (*or resist, wilfully obstruct*), C. D., he being then a peace officer, to wit, a constable of _____, and then in the due execution of his duty, contrary to the statute.

Appendix of Forms of Offences, &c.

Punishment—Imp. n. ex. 2 yrs. **M. B.** discretionary (I. A.), 13 & 14 Vic., c. 101, s. 9.

8. *Common Assault and Battery (Indict.)*, with or without Bodily harm.—For that he, the said A. B., on, &c., at, &c., unlawfully did assault, wound and ill-treat C. D. (and if so, and thereby then occasioned unto said C. D., great actual bodily harm) (a), against the peace, &c.

9. *Common Assault. (Summ.)*—That on the day of at in the District, C. D., of, &c., at, &c., did unlawfully assault and beat (if no battery, say assault), this informant, contrary to the statute, &c.

10. *Assault on Constable. (Summ.)*—Did unlawfully assault and beat this informant, he being one of the constables of, &c., and being then and there in due execution of his duty, against the peace &c.

11. *Aggravated Assault upon Females and Boys under Fourteen. (Summ.)*—For that he, the said A. B., on, &c., at, &c., unlawfully did assault and beat (or assault) , a certain male child, not exceeding the age of fourteen

(a) *Actual bodily harm* would include any hurt or injury calculated to interfere with the health or comfort of the prosecutor; it need not be an injury of a permanent character, nor need it amount to what would be considered *grievous* bodily injury.

Grievous bodily injury.—It is not necessary that a *grievous bodily harm* should be either permanent or dangerous; if it be such as seriously to interfere with health or comfort, that is sufficient; and therefore, where the defendant cut the private parts of an infant, and the wound was not dangerous, and was small, but bled a good deal, and the jury found that it was a *grievous bodily harm*, held that the conviction was right.

Appendix of Forms of Offences, &c.

years, to wit, of the age of years, (or a certain female), named C. D., (the complainant), contrary, &c.

12. *Indecent Assault on a Female (a).*—For that he, the said A. B., on, &c., at, &c., unlawfully did indecently assault and ill-treat a certain female, named C. D., against the peace, &c.

M. Imp. not ex. 2 yrs. 24 & 25 Vic., c. 100, s. 52.
B. disc.

ATTEMPTS TO MURDER

By Stabbing or causing bodily harm, or Shooting.—For that he, the said A. B., on, &c., at &c., feloniously did wound one C. D. (or feloniously did cause certain grievous bodily harm to C. D., or feloniously did shoot at C. D. with a certain gun, loaded with powder and ball), with intent, in so doing, then and there feloniously, wilfully, and of his malice aforethought, to kill and murder the said C. D., contrary to the statute, &c.

(a) *Indecent Assault* must be an assault accompanied with indecency on the part of the defendant. Where there is proof that the woman assented, defendant must be acquitted. If, on an indictment for an indecent assault, it appears that the woman consented to the assault, but that her consent was procured *by fraud*, such consent constitutes no defence. See also under Summary Jurisdiction.

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c. 100, s. 57. Indict. (a)

BIGAMY.

For that he, the said A. B., on the day of ,
at , in the said District, feloniously did marry and
take to wife one *Ann Smith*, his former wife, to whom he
was previously married, to wit, on day of ,
A. D. 18 , being then alive, contrary, &c.

F. Imp. not ex. 2 yrs. **B.** dis. (I. A.) 24 & 25 Vic.,
c. 100, s. 57. Indict.

Prove first marriage, and that first wife was alive at the time of the second marriage. The marriage may be proved by the production of the register, or by an examined copy or extract, provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted. Prove second marriage. First wife is not a competent witness to prove any part of the case, either for or against her husband; the second wife is, the previous marriage being proved, for the second marriage is void. [*Arch.* 275.]

(a) ACCOMPLICE.—DUTY OF A JUSTICE.—A Justice has no power to make a promise of pardon, and it is his duty to commit an accomplice for trial, notwithstanding it is intended that he should give evidence for the prosecution. Where the evidence would be too weak to justify a commitment independently of the testimony of the accomplice, the proper course seems to be to take the deposition of the accomplice in the usual way, cautioning him, at the same time, that he is not bound to say anything which may criminate himself. In this case, the accomplice would be bound over as a witness, and the circumstances explained to the Judge, before the indictment against the prisoner is presented to the grand jury. The rule which requires the evidence of an accomplice to be corroborated is one of practice only, approved of by the superior courts.

BURGLARY.

Entering a Dwelling House at Night, with intent to commit Felony.—For that he, the said A. B., on the day of , at , in the said District, about the hour of (eleven) in the night, feloniously and burglariously did break and enter the Dwelling House of C. D., there situate, with intent to commit felony therein, contrary to the statute, &c.

Dwelling House.—Must prove that the defendant broke and entered the dwelling house in which C. D. resided, or some building between which and the dwelling house there was a communication.

Breaking.—There must be a breaking, actual or constructive; but lifting a latch, breaking out a pane of glass, pushing open a window, fastened with wedges, has been held a breaking. Entering through an open window—is not breaking—breaking out, however, through an inner door—is sufficient breaking.

Entry.—Any, the least degree of entry, however, with any part of the body, or with an instrument held in his hand, is sufficient.

Intent.—The best evidence of intent is, that the defendant actually committed the felony alleged to have been intended by him.

Night.—By law, now, night commences at 9 p.m., and ends at 6 a.m., of the next morning. To constitute a burglary, crime must be committed within those hours.

CONCEALING BIRTH OF A CHILD.

For that she, the said A. B., on the day of , at , in the said District, was delivered of a child, and being so delivered of the said child, did then unlawfully endeavor to conceal the birth of the said child, by secretly burying the dead body of the said child (*if it was by other*

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Appendix of Forms of Offences, &c.

means than secret burying, state the mode of disposing of the body); contrary, &c.

M. P.—Imp. not ex. 2 yrs. (I. A.) 24 & 25 Vic., c. 100, s. 60. **Indict. B.** discretionary.

Birth.—This must be proved, and the mode of concealment, and also that the mother did it, if she is the one charged; the body of the child must be covered and concealed. Denial of the birth, no preparations having been made for confinement, and no assistance called for, generally form part of the evidence in such cases. Three points must be proved in such cases: 1st, That the woman was delivered of the child; 2nd, That she secretly buried, or otherwise secretly disposed of the body; 3rd, That the burying was an actual concealment of the body.

FALSE PRETENCES.

Obtaining Money, Goods, &c., by False Pretences.—For that he, the said A. B., on, &c., at, &c., did unlawfully obtain from the said C. D., certain goods (*or money, as the case may be*), by means of a certain false pretence, then and there made by him, the said A. B., to wit, that he was sent to the said C. D., by one E. F., to buy the same for him (*setting out the false pretence*), with intent thereby then to defraud, well knowing the said pretence to be false, against the form of the statute, &c.

Mis. Pun. not ex. 2 yrs. imp. (I. A.) 24 & 25 Vic., c. 96, s. 88, 89 & 90. **B. dis. Indict.**

Must prove false pretence as charged. Property obtained or money; if the charge is for obtaining two pairs of shoes, proof that the defendant obtained one pair will do. *Money.*—Coin may be described simply as money, and the allegation will be sustained by proof of any amount of coin, although the par-

Appendix of Forms of Offences, &c.

ticular species of coin, of which such amount was composed, shall not be proved. [Arch. 314.]

With intent to defraud.—It is only necessary to state in the charge and to prove an intent to defraud, generally, without alleging or proving an intent to defraud, any particular person.

The defendant may be convicted, although the offence turns out to be larceny.

FISH STEALING.

Codfish, green or cured.—For that he, the said A. B., on, &c., at, &c., three quintals of codfish, cured (or green), of a value not exceeding twenty dollars, to wit, of the value of fifteen dollars, of the goods and chattels of C. D., feloniously did steal, take, and carry away, contrary, &c.

Punishment—Imp. not ex. 6 weeks. *Summ.*

FORGERY.

For that he, the said A. B., on, &c., at, &c., feloniously did forge (or did offer, utter, and put off to John Munn and others, trading under the firm of John Munn and Company, well knowing the same to be forged), a certain order, purporting to be an order from John Jones to John Munn and Company, for the payment to Job Stiggins of

Appendix of Forms of Offences, &c.

ten pounds, for wages, with intent thereby then to defraud, against, &c.

F. Pun. not ex. 2 yrs. imp. 24 & 25 Vic. c. 98, s. 23,
(I. A.) **B.** dis., Indict.

Prove that the order was forged, by producing the person whose name is forged to order. Presenting an order over the counter is uttering and putting off. "Using of a forged instrument, in some way, in order to get money or credit upon it, or by means of it, is sufficient to constitute the offence described in the statute."

With intent to defraud.—It is not necessary to prove the intention of the defendant to defraud any particular person; it is sufficient to prove generally an intent to defraud. "*Well knowing the same to be forged.*" "This is not capable of direct proof; it is, therefore, nearly always proved by evidence of facts, from which the jury may presume it."

The statement of the prisoner to the Clerk at the time of presenting the forged instrument will generally furnish the strongest evidence against him on this head.

LARCENY.—(*Stealing*).

For that he the said A. B., on, &c., at, &c., three pairs of shoes and one waistcoat, of the goods and chattels of C. D., feloniously did steal, take and carry away, against the peace, &c..

I. F. Imp. not ex. 2 yrs. Common Law. **B.** discretionary.

LARCENY DEFINED.—Larceny at common law is the wrongful taking and carrying away of the personal goods of any one from his possession, with a

Appendix of Forms of Offences, &c.

felonious intent to convert them to the use of the offender, without the consent of the owner. But goods which are not personal chattels at common law have been made the subject of larceny by statute. *Simple* larceny is the larceny of the goods only; *compound*, is a larceny from the person or habitation of the owner. [*Boothby, Syn. 163.*] The component parts of the offence of simple larceny are the taking—the carrying away or asportation (as it is technically termed)—and the felonious intent. With respect to the *taking*, it may be either actual or constructive—actual, where the party takes the goods out of the possession of the owner *invito domino*, by force, or stealth or the like; constructive, where the possession is obtained by some trick or artifice, or the like, with intent at the time to convert them to the party's own use, but which has not the effect of transferring any right of property from the owner to such party; for if such right be transferred, the offence will not be larceny, but may be that of obtaining goods under false pretences. [*2 Arch.*] With respect to the *carrying away*, any removal of the goods from the place where they were, however slight, and notwithstanding they may be left on the premises, will be a sufficient asportation; as, for instance, removing a parcel which lay in the forepart to the middle or tail of a waggon; taking plate out of a chest and laying it on the floor; snatching an earring from a lady's ear, which is instantly dropped among the curls of her hair; or drawing a pocket-book out of the inside pocket of a coat above the top of the pocket, although it should then fall again into the pocket. [*B. Syn. 196.*] But a mere *change of position* of the goods will not be sufficient; as, for instance, setting a wrapper which was laid lengthway of a waggon on one end for the greater convenience of taking out the contents. To constitute the larceny, the felon must, for an instant at least, have the entire and absolute possession of the goods. [*R. v. Cherry, 2 East, P. C. 556.*] It will be larceny for a person to run away with money given to him by another person to procure a railway ticket, she being present all the time. [*R. v. Thompson, 32 L. J. 52.*] There must also be a complete severance from the possession of the owner, and therefore it has been held that the asportation will not be complete if the prisoner were unable to carry off the property on account of its being attached to the counter by a string which was not cut or broken, or on account of its being tied to a bunch of keys which remained in the prosecutor's pocket. With respect to the *felonious intent* the goods must have been taken without any claim of right, for if they were taken either by mistake or under a *bona fide* claim of right, however unfounded, it will not be felony. But it will be for the Court to determine on the evidence, whether they were taken under such an assertion or supposition of right, or with a thievish and felonious intent. The *animus furandi* must have existed at the

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time when the goods were taken, except in the case of a servant stealing his master's goods, when this principle will not apply [see *R. v. Roberts*, 3 Cox, C. C. 74], the subsequent appropriation of them without an original felonious intent not constituting the criminal offence of larceny. It may be laid down as a general rule, that the taking and carrying away are felonious, where the goods are taken against the will of the owner, either in his absence or in a clandestine (*a*) manner, or where possession is obtained by force or surprise, or by a trick or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods, and where the taker intends, in any such case, fraudulently to deprive the owner of his entire interest in the property against his will, permanently and not temporarily.

(*a*) The openness or secrecy with which an act is done is an important element in the consideration of this offence, and constitutes in many cases the distinction between a felony and a trespass.

NOTE.—Information on other offences will be found throughout this work; the reader should consult the Index.



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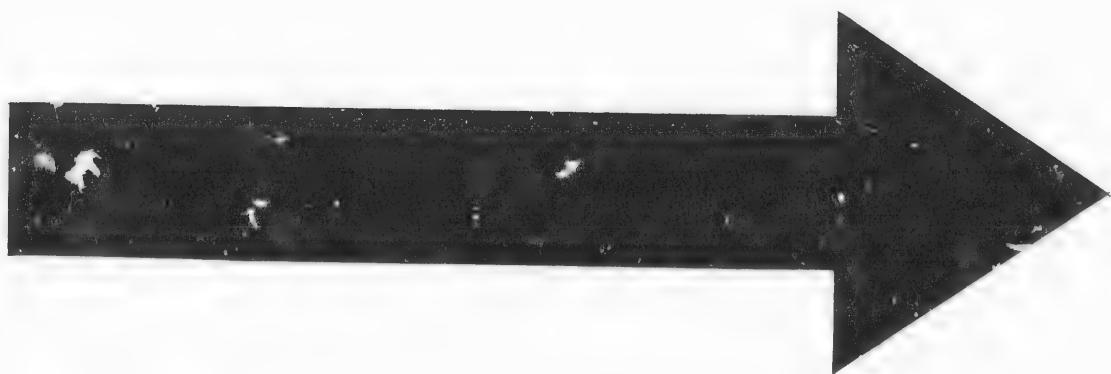
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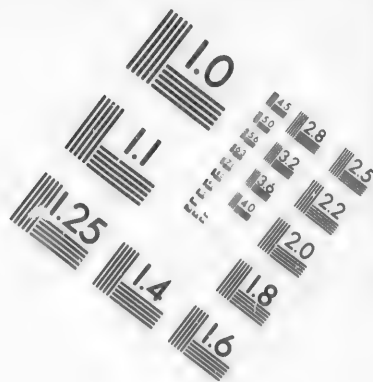
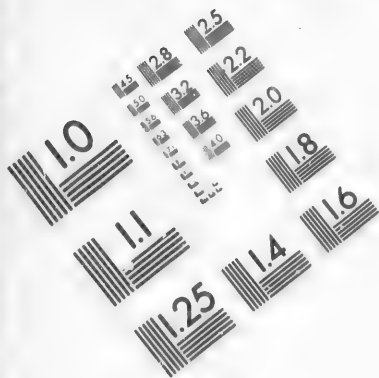
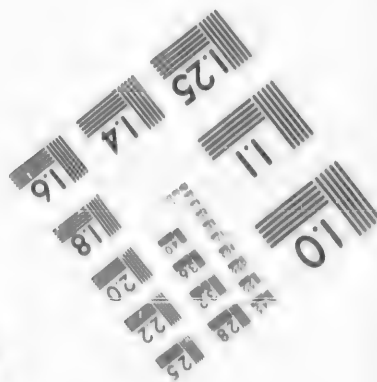
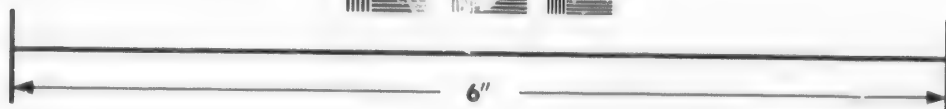
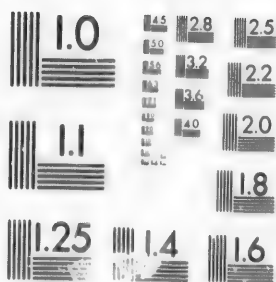
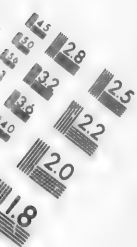


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- AGRICULTURE—Encouragement of; Bounty of \$20 per acre—Act of 1898.
- AGRICULTURAL ACTS—Boards of Agriculture; Sec. 6 of Cap. 14 Consolidated Statutes (N. S.), repealed by Act of 1898.
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- FEES—All Fees before Magistrates to be paid by Stamps—Act of 1898.
- FISHERIES—Coast and Inland, now regulated by Rules published April 11, 1898.
- INFLAMMABLE OILS—Amended by 60 Vic., Cap. 9, 1897.
- LIGHT DUES payable for twelve months, not year—Act of 1898.
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- PILOTS—St. John's; now regulated by Act of 1898.
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